

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
IN RE NEW YORK CITY POLICING : Docket #20cv8924  
DURING SUMMER 2020 DEMONSTRATIONS :  
: New York, New York  
February 11, 2022  
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE  
THE HONORABLE GABRIEL W. GORENSTEIN,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Sow and Hernandez      COHEN & GREEN  
Plaintiffs:                    BY: REMY GREEN, ESQ.  
1639 Centre Street, Suite 216  
Ridgewood, New York 11385

For Payne Plaintiffs:      NEW YORK CIVIL LIBERTIES UNION  
BY: JESSICA PERRY, ESQ.  
125 Broad Street, Suite 19  
New York, New York 10004

For Sierra Plaintiffs:      RICKNER PLLC  
BY: ROB RICKNER, ESQ.  
14 Wall Street, Suite 1603  
New York, New York 10005

For Plaintiff People      NEW YORK STATE OFFICE OF  
of the State of New      THE ATTORNEY GENERAL  
York:                        BY: TRAVIS ENGLAND, ESQ.  
28 Liberty Street  
New York, New York 10005

Transcription Service: Carole Ludwig, *Transcription Services*  
155 East Fourth Street #3C  
New York, New York 10009  
Phone: (212) 420-0771  
Email: Transcription420@aol.com

Proceedings recorded by electronic sound recording;  
Transcript produced by transcription service.

APPEARANCES (CONTINUED):

For Gray Plaintiffs:      DAVIS WRIGHT TREMAINE LLP  
BY:   ROBERT BALIN, ESQ.  
1251 Avenue of the Americas  
New York, New York 10020

For Yates Plaintiff:      STOLL, GLICKMAN & BELLINA, LLP  
BY:   ANDREW STOLL, ESQ.  
300 Cadman Plaza West, 12<sup>th</sup> Floor  
Brooklyn, New York 11201

For Defendants:          NEW YORK CITY LAW DEPARTMENT  
BY:   DARA WEISS, ESQ.  
         GENEVIEVE MILTON, ESQ.  
         JENNY WANG, ESQ.  
100 Church Street  
New York, New York 10007

INDEXE X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>	<u>Court</u>
None					

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
None				

HONORABLE GABRIEL W. GORENSTEIN (THE COURT):

Okay, you can call the case.

THE CLERK: This is In Re: New York City  
Policing During Summer 2020 Demonstrations, case number  
20cv8924.

Will counsel, please state your appearances for  
the record, starting with plaintiffs.

MX. REMY GREEN: Good morning, this is Remy Green  
from Cohen & Green, representing the Sow and Hernandez  
plaintiffs. And for the recording, I should appear in the  
transcript as Mx. Green spelled M-X-period, rather than Mr.  
or Ms., thank you.

MR. TRAVIS ENGLAND: Good morning, this is  
Travis England from the Office of the New York State  
Attorney General on behalf of The People of the State  
of New York.

MS. JESSICA PERRY: Good morning, this is  
Jessica Perry with the New York Civil Liberties Union  
Foundation appearing on behalf of the Payne  
plaintiffs.

MR. ROB RICKNER: Good morning, this is Rob  
Rickner, Rickner PLLC, appearing for the Sierra plaintiffs.

MR. ROBERT BALIN: Good morning, Your Honor,  
this is Robert Balin of Davis Wright Tremaine,

1  
2 appearing on behalf of the Gray plaintiffs.

3 MR. ANDREW STOLL: And, good morning, this is  
4 Andrew Stoll for Cameron Yates.

5 THE COURT: All right, and for defendants?

6 MS. DARA WEISS: Good morning, Your Honor, this  
7 is Dara Weiss from the New York City Law Department.

8 MS. GENEVIEVE MILTON: Good morning, Your  
9 Honor, this is Genevieve Milton also from the Law  
10 Department.

11 MS. JENNY WANG: Good morning, Your Honor,  
12 this is Jenny Wang also from the Law Department.

13 THE COURT: Okay, let me remind everyone we're  
14 being recording but any other recording of the proceeding  
15 is forbidden, as is any transmission, dissemination or  
16 rebroadcast.

17 We're here based on a number of matters and I  
18 have an order in my mind I'd like to go through them,  
19 basically from smaller in scope to larger in scope. You  
20 did have something that did not, was not the subject of an  
21 order, it was something from Mr. Rankin, number 386, which  
22 sounds like it's being solved by stipulation so I'm  
23 assuming that's going to be given to me in due course and  
24 I'm not going to be concerned about that further.

25 The next one that I want to go to are, hold on a

second, the two unopposed letters for which there are proposed orders 370 and 374. I am not sure there's a lot to say but if the City wants to say anything about the phrasing of the orders that's fine, anything on 370?

MS. WEISS: Yes, Your Honor, this is Dara Weiss. On 370, which is the order on the *Payne v. de Blasio* case, I just, there were two things. First, we respectfully request that Your Honor permit the defendants to assert objections on the, the discovery demands that, that were not responded to. although we were late, it's part of I guess the overall issue that we're having in this case and that has led to everything that we're here for today. The plaintiffs are absolutely bombarding the defendants with letters and emails and letters to the Court and requests for meet and confers. And these discovery responses fell sort of into the category the rest of these issues were in that we're simply unable to keep up. There was no malice, it was inadvertent that responses weren't done, the attorney from our office who was assigned to draft the responses to these was wrapped up in a lot of other things. She communicated with plaintiffs on a number of occasions that she needed a little more time, it just, unfortunately, did not get

1  
2 done. So for that we apologize to plaintiffs and to  
3 the Court but we think that that's such a strong  
4 remedy of not allowing the defendants to interpose  
5 objections is certainly a lot.

6           We're really happy to produce responses and  
7 the documents that our clients have in a short period  
8 of time, but we would like to be able to pose  
9 objections. The second thing is plaintiff have put in  
10 their proposed order that full responses should be  
11 submitted by February 15<sup>th</sup> which is five days from  
12 today and considering all the other discovery that  
13 we're trying to get out to plaintiffs and the fact  
14 that we're in the middle of depositions, we just don't  
15 think that that is a reasonable time period for  
16 defendants to be able to respond.

17           THE COURT: All right, before I hear from  
18 plaintiffs, on the first point, it's completely  
19 unacceptable to not comply with Court orders and to  
20 not comply with my individual practices. There are  
21 not so many letters coming in to me that that  
22 shouldn't be an obligation that you keep paramount in  
23 your mind, and if you can't comply with my orders and  
24 you can't comply with my individual practices, it  
25 really makes you question whether you're doing

1  
2 everything else you're supposed to do in terms of  
3 dealing directly with the plaintiffs when I'm not  
4 there to oversee it. So it's completely inexcusable  
5 and I'm surprised you don't understand that.

6           So in terms of the merits of this particular  
7 request, I didn't just, you know, endorse the letter,  
8 as you saw, I allowed you to make, to address it here  
9 at the conference. So if there is something that is,  
10 you on the merits say you shouldn't have to produce,  
11 I'm ready to hear from you, we're going to do it right  
12 now. If it's simply a timing issue, we can talk about  
13 that.

14           MS. WEISS: Well I think on the merits for the  
15 second request, plaintiffs had requested that we  
16 attempt to identify some officers by photographs which  
17 are fine, you know, we do that quite often, we send  
18 those photos to our clients and see if there is  
19 anything in them that allows them to attempt to make  
20 an identification. And we have no problem doing that  
21 quickly but there is no guarantee that they will be  
22 able to, to identify them, so I just want to make that  
23 clear. And I think I'm (indiscernible), I'm sorry, I  
24 just want to double check that, I am, this is the  
25 second set.



1 I think that a big part of the issue though  
2 is, is the document request, they're asking for all,  
3 in their order they're asking for all of the  
4 documents. It's a lot of stuff, a lot of stuff, a lot  
5 of which has been produced already, but for us to  
6 produce all of something, it kind of puts us in a bad  
7 position because there's no way to guarantee that we  
8 have all or can produce all of something. We could  
9 produce what's in our possession, what we can locate,  
10 but putting in the word all kind of sets us up to fail  
11 because if something is not there that we find later,  
12 you know, based upon the prior acts of plaintiffs'  
13 counsel, it's, they're going to, we fear that they're  
14 then going to Your Honor and complain that we didn't  
15 produce all. We know we have an ongoing obligation to  
16 supplement any discovery responses and we will, of  
17 course, do that, but it's a matter of being ordered to  
18 produce the documents in response to the request that  
19 can be located after the searches that our clients do.

21 A lot of the document request in this  
22 supplemental request are already the subject of a lot  
23 of other document requests in other of the  
24 consolidated cases, be it their consolidated discovery  
25 demands or discovery demands that have been sent by

1 individual plaintiffs' cases so there's really  
2 probably not anything here that hasn't been either  
3 produced or was the subject of a meet and confer that  
4 we had just this past Wednesday. I'm looking at it  
5 now, Your Honor, and it's really, it's really things  
6 that have been dealt with in other cases in  
7 consolidated demands during meet and confers and it,  
8 these -- and just one final thing, if we're unable to  
9 identify these two officers then we're certainly not  
10 going to be able to provide documents related to them.  
11 To the extent that we can identify these two officers,  
12 as we have been doing throughout this litigation,  
13 we'll provide these types of documents that are  
14 related to that officer.  
15

16 THE COURT: Okay, I think I'm, I think all I  
17 heard was that if you can't locate the documents you  
18 won't be producing them, and that's, I'm going to put  
19 in the order that if there is some category here  
20 you're not producing you have to explain that in  
21 writing at the time you make the production, I think  
22 that will solve that.

23 Anything else on the plaintiffs' side, I guess  
24 it is, let's see, hold on, Ms. Perry maybe who signed  
25 this letter, whomever is speaking about this?

1  
2 MS. PERRY: Yes, Your Honor, I'm speaking  
3 about this for the Payne plaintiffs, good morning. I  
4 think the only, the only things I would say are the,  
5 you know, in the second document request, you know,  
6 the documents that we've requested are not documents  
7 that we, that have been produced yet and we, and there  
8 is also not language in the second document request  
9 that requests all documents, so I just wanted to note  
10 that, note that for the record.

11 But, and I guess I'll just briefly --

12 THE COURT: Well, I mean your proposed, your  
13 proposed order says all documents, I think that's  
14 what set this off.

15 MS. PERRY: I understand, Your Honor, that's  
16 understandable. In that case, I don't think we have  
17 any, anything else to respond to that Ms., that Ms.  
18 Weiss raised.

19 THE COURT: Okay. All right, so and does this  
20 relate to any upcoming depositions, this particular  
21 document production, that's a question for Ms. Perry  
22 or Ms. Weiss?

23 MS. PERRY: We have noticed a number of  
24 depositions that have not yet been scheduled of I  
25 believe three officers who, who are identified in both

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

the second and third requests, but those depositions have not been scheduled and we're still sort of been conferring over defendants about getting those depositions scheduled.

THE COURT: Okay, and the reason I'm asking is that I want to frontload document obligations onto the City that relate to, you know, imminent depositions. So it seems like this is not something that should be frontloaded. I'm not saying, you know, we should wait some lengthy period but this doesn't have to be done in the next few days, would you agree, Ms. Perry?

MS. PERRY: Yes, we, I agree in that we, the depositions are not currently scheduled and we're currently in the process of undertaking other depositions. But I will just note that, you know, a pattern that we've noticed in this case is that for individual fact witnesses and individual cases, those, the discovery relating to those cases often gets put on the back burner and then we're left in a position of kind of attempting to track down discovery that we need to make out our individual claims.

And so we do think that a deadline of five days is reasonable, and given that defendants have had not over a month since they responded to give us the response to the third request, we do think that, you know, to the extent

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

they have any documents in their possession right now they should be produced in short order.

THE COURT: I'll keep that in mind, I'm going to, when I issue the order is when I'm going to fill the dates in so you'll see it when it comes out.

MS. PERRY: Thank you, Your Honor.

THE COURT: Okay, our next one I guess is from Mr. Rickner, it's number 374, I'm going to start with the defendants to see if there is anything they want to say about the wording of the order?

MS. WEISS: Yes, Your Honor, this is another issue with the word all. We can certainly produce documents that we have and that are in our possession, the defendants, but that doesn't necessarily account for all that may exist. So I just wanted to point that out again, and --

THE COURT: If I can just interrupt you, Ms. Weiss, I'm just a little thrown off when you say we can produce things in our possession but that's not necessarily all. As I'm sure you know, Rule 34 only requires you to produce things that are in your, I forget the word, custody, possession, so what is it you're getting at?

MS. WEISS: I do think, as I said before, it

1 kind of sets us up to fail because it's in, as we've  
2 noticed throughout the litigation of this case,  
3 plaintiffs very often revert to saying that things  
4 should exist or they can't believe things don't exist.  
5 And then when the defendants produce whatever they  
6 have in their possession, custody or control,  
7 plaintiffs often complain that that's not it, this is  
8 not all. They certainly can't know what is in the  
9 defendants' possession yet they claim to. And then if  
10 the defendants supplement their response afterwards because  
11 they have then found something else, plaintiffs tend  
12 to complain that we violated an order or an agreement  
13 because the first time we made a production we didn't  
14 produce all.

16           So that's kind of our concern. I understand  
17 what the Federal Rules say and we can only produce  
18 what we have and we're required to supplement but we  
19 do. But that just, it makes another place for  
20 plaintiffs to complain and then, once again, write  
21 emails and letters and go to the Court which we're  
22 really hoping to try to have plaintiffs cut down on.  
23 Because, as I think you've seen in the letter that I  
24 submitted last night, it's, it's a lot.

25           THE COURT: Ms. Weiss, I have to say this line

1 of argument makes no sense to me. From what I've  
2 gathered, what actually is typically happening is that  
3 City is producing some materials, the plaintiffs are  
4 noticing it's not all, you're conceding, as you just  
5 did now in your discourse that you then come up with  
6 it, and they're right, you did violate the order. Now  
7 it's possible you did a reasonable search in which  
8 case it's justified, but it's also possible you didn't  
9 do a reasonable search and the only reason you came up  
10 with the other stuff was because the plaintiffs  
11 happened to know that it existed.  
12

13           So no one is being set up when they're being  
14 told to produce all documents on a topic, that happens  
15 every single day in every single litigation. Parties  
16 then do a reasonable search and they don't feel  
17 they're being set up. They produce the documents and  
18 usually there's not an issue, and when there is an  
19 issue then we solve it through the mechanisms. And,  
20 you know, maybe we'll talk later about whether those  
21 are working or not. But you're making me very  
22 concerned with these objections, the idea that you are  
23 incapable of producing, of doing a reasonable search  
24 to produce the documents, it makes no sense.

25           So there's nothing on the substance of this

1  
2 then in terms of scope or date of the proposed order?

3 MS. WEISS: No, those, these are documents  
4 that we will produce. We would like a date further out  
5 than February 18<sup>th</sup>, that's a week from now, we would  
6 request 30 days to provide these documents.

7 THE COURT: Mr. Rickner, is there a deposition  
8 as to which these are going to relate that's coming  
9 up?

10 MR. RICKNER: Well, there may, it depends on  
11 what's in the documents so it's hard for me to know.  
12 We know for a fact that Dermot Shea weighed in on the  
13 sanctions on Mr. Mullins so, and I don't believe his  
14 deposition is within the next 30 days so that isn't  
15 the issue. But the problem is, is that I suspect there  
16 were an awful lot of high level people involved in  
17 this decision, I mean fire, the recommendation to fire  
18 the head of the Sergeants Benevolent Association is  
19 not a minor event at the NYPD, so I don't know. I  
20 don't know who was involved with that because I can't  
21 see under the hood because I don't have the documents.  
22 So there very well may be depositions that are  
23 currently scheduled and when we get the documents  
24 we're going to say, oh, no, I would have liked to have  
25 used this on some other person's deposition, like the



1 Dowling deposition that's going right, going on right  
2 now. It also might be relevant to the 30(b)(6)  
3 depositions which are being scheduled, you know,  
4 within the next 30 days or taking place within the  
5 next 30 days, at least for some of them.  
6

7 So it's hard for me to answer the question and  
8 it kind of highlights the entire problem we have,  
9 which is I don't know what there is and what there  
10 isn't until the City gives it to me. And, you know, I  
11 guess I would just say that if it does turn out that,  
12 you know, there are key documents to a witness whose  
13 deposition has already taken place, that we be able to  
14 recall that witness because we've certainly been  
15 diligent.

16 THE COURT: Right. Well, I mean the, I mean  
17 the email searches have happened, and that's a done  
18 deal. So this seems like it's documents mainly about  
19 an investigation, is that, was that what you're  
20 seeking, Mr. Rickner?

21 MR. RICKNER: Yeah --

22 THE COURT: Like these are actual  
23 investigation reports or something like that?

24 MR. RICKNER: Yeah, I mean my assumption is,  
25 is that there's, well we know there's the CCRB

1  
2 investigation, in fact, several of them. I believe  
3 there was also an internal NYPD investigation of some  
4 kind, as well, I know less about what that looks like.  
5 So, yes, so that is the, I guess sort of the meat and  
6 potatoes of what we're looking for. But, again, there  
7 may be other things that are relevant and I don't know  
8 enough about how the NYPD structures these things to  
9 know specifically what documents to look for. For  
10 example, if there is a process that the NYPD goes  
11 through when they decide to override the CCRB's  
12 decision to fire somebody and go to a lesser sanction,  
13 if there's, I don't know what that process is, but if  
14 it's out there and it's document that's also included  
15 in our requests.

16 THE COURT: Ms. Weiss, what do you know about  
17 the burdensomeness of this request?

18 MS. WEISS: I, I don't know, to be honest,  
19 Your Honor. We had originally objected to providing  
20 these documents for a number of reasons, not including  
21 burdensomeness, we'll now provide them. CCRB  
22 documents I know are fairly quick and easy to get,  
23 internal NYPD investigations not as easily acceptable.  
24 And I know from other internal investigation documents  
25 that the plaintiffs have requested in this case,

1  
2 there's many, many, many of them that they take quite  
3 a bit of time to get and that unit is very, very  
4 backed up right now. You know, we could certainly ask  
5 them to put something to the head of the line, but  
6 then it's just going to slow down the process for the  
7 other ones that, that the plaintiffs have asked for in  
8 these cases, you know. And, additionally, there's  
9 likely --

10 THE COURT: What other ones are you talking  
11 about? Are you talking about other incidents regarding  
12 arrests and so forth?

13 MS. WEISS: Yeah, other IAB and internal NYPD  
14 investigations into arrests and uses of force for  
15 these protests as well as I believe plaintiffs had  
16 requested individual IAB histories for defendant  
17 officers and witness officers. I don't have all of  
18 those requests in front of me right not, I apologize,  
19 but I do know that the IAB section has been working  
20 very hard and as quickly as they can to get us any  
21 other outstanding sort of disciplinary documents for  
22 other issues in these cases.

23 And if I may, Your Honor, although I  
24 understand that allegations of bias policing are a  
25 part of some of the plaintiffs' claims in these cases,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I don't think that they are some of the bigger issues for the overall consolidated cases. So although there is going to be one 30(b)(6) deposition on this issue, there's a number of other 30(b)(6) depositions on a lot of other I think more sort of overall and pressing issues in these cases.

So I don't want to belittle the importance of this issue, but I think it's just a smaller one overall for these consolidated cases as opposed to ones like, you know, improper training, things like that.

THE COURT: Is the 30(b)(6) on this topic scheduled?

MS. WEISS: I know there's a witness, I don't know when that witness is scheduled for.

THE COURT: Does someone, Mr. Rickner, do you know?

MR. RICKNER: I, unfortunately, I do not have that information at my fingertips but I will say that the lion's share of these have been scheduled to be completed before the end of March. So there's a good chance that it is scheduled and, you know, it's not just getting the documents, we need to prepare and think about them in order to make proper use. So

1 giving them to us, you know, what happens to be two  
2 days beforehand doesn't necessarily do much good.

3 I mean also to the other point, this is  
4 protests as part of the Black Lives Matter movement,  
5 racism among high level people at the NYPD is of  
6 paramount importance. This isn't something that could  
7 be I think shuffled to the side or just dealt with  
8 later because it's not a big issue, it is a big issue.  
9 And also the idea that this Court's order would sort  
10 of just go into the morass of regular discovery is a  
11 false equivalence, this is a Court order, it goes to  
12 the top of the pile, it gets paramount importance.  
13 And, frankly, it's important over emails and other  
14 requests and other things they're doing.

15 THE COURT: Well I think they're talking about  
16 other productions in this case so I'm not sure this  
17 particular, I mean I don't know but I'm not sure this  
18 particular production is more important than other  
19 productions they're doing in this case, is that what  
20 you're saying?

21 MR. RICKNER: Well, I'm saying that the other  
22 productions may not necessarily be part of a Court  
23 order and I do think, in general Court orders should  
24 take priority. But another --  
25

1  
2 THE COURT: No, no, they're willing to do  
3 that, what they're saying is if you do it then now  
4 other things are going to be delayed. I mean I can't  
5 believe this is going to delay much but that's their  
6 point. They're not saying that it won't happen,  
7 they're saying that it will cause delay in other  
8 things. So my question is, you know, what, is this of  
9 greater, you know, temporal importance than the other  
10 things in terms of the need for the documents  
11 (indiscernible), that's all I was trying to figure  
12 out.

13 I don't think it's going to make much  
14 difference. I'm going to, I'm going to give a date in  
15 the next week or two to produce these so I'll figure  
16 them out at the end of this. I think we're okay on  
17 this now.

18 MR. RICKNER: Yep, understood, thank you, Your  
19 Honor.

20 THE COURT: Okay, my next issue is 379, we're  
21 going to end with the prior protests. So, Mr. Rickner,  
22 I think this was your letter, right?

23 MX. GREEN: No, I believe this is mine and  
24 this is Mx. Green, Your Honor.

25 THE COURT: I'm looking at 379, it has Mr.

1 Rickner's signature on it.

2 MX. GREEN: Oh, sorry, prior protests, 379, my  
3 mistake.

4 THE COURT: No, no, I said prior protests was  
5 last, you're 369.

6 MX. GREEN: Oh, I am so sorry.

7 THE COURT: Okay, no problem. Mr. Rickner,  
8 this is you, right? Mr. Rickner, you may be on mute.

9 MR. RICKNER: You're right, I was on mute,  
10 thank you, Your Honor.

11 THE COURT: Okay.

12 MR. RICKNER: So going to the, the audit trail  
13 logs, I mean really this is two motions in one I  
14 suppose, one is for sanctions and one is to actually  
15 get the information that we've been seeking for many  
16 months. I can address those in either order that the  
17 Court would prefer.

18 THE COURT: And let's end, let's have  
19 sanctions last.

20 MR. RICKNER: Okay, well, I think the first,  
21 the primary argument they're making is burden, and  
22 this is very troubling because I thought we had  
23 already settled this issue. After the motion that we  
24 filed in August the Court ordered a conference with  
25

1 people from the NYPD. This was actually a really  
2 productive conference, we learned a lot, and the NYPD  
3 conceded that bulk exports of audit trail logs weren't  
4 that hard, they just had to set up their system and  
5 turn off or turn on one particular function and then  
6 they could do bulk productions.  
7

8           So on September 28<sup>th</sup> the City through Alyssa  
9 Jacobs, counsel who was on this case, emailed and they  
10 said, and this is a quote in the email, September 28<sup>th</sup>,  
11 "I have spoken with the clients who have agreed that  
12 they would permit bulk downloads in these  
13 circumstances, and so we will withdraw the  
14 burdensomeness objection to the extent it was based on  
15 having to download each audit train individually."

16           Now following that, in two separate letters,  
17 in the January 18<sup>th</sup> motion which resulted in the order  
18 which got us where we are today, as well as my motion  
19 regarding the, you know, the failure to comply with  
20 that order on February 3<sup>rd</sup>, in both of those I said  
21 specifically, the only thing left here to talk about  
22 is relevance. The City did not jump in on either of  
23 those letters to say, no, Mr. Rickner is wrong, we  
24 still have another burdensomeness argument. And now I  
25 get the letter, as did the Court last night, and we



1  
2 see a burdensomeness argument.

3           This is really a core problem in this case,  
4 which is we cannot get the City to take a clear and  
5 coherent point and we don't find out what their point  
6 is until, until effectively motion practice and even  
7 then, in this case, it's contradictory to what I  
8 thought was a pretty clear waiver of this argument  
9 beforehand. It's really been waived two times, once by  
10 not responding to the February 3<sup>rd</sup> letter or the  
11 January 18<sup>th</sup> letter, and once through the September  
12 28<sup>th</sup> email that I thought settled the burdensomeness  
13 issue.

14           And also, above and beyond that, they're  
15 wrong, this isn't burdensomeness. You can look and see  
16 the audit trails that we've attached to the motion and  
17 you can see there's tagging and, in fact, in some  
18 cases even tagged to my case, to the Sierra  
19 plaintiffs. And so they can use those tags through  
20 the evidence.com system which is designed to tag and  
21 catalog large amounts of bodycam footage. It's  
22 sophisticated program, I've read multiple portions of  
23 the manual, that's why I was so confident that this  
24 could be done relatively easily when I went into the  
25 meet and confer with the NYPD, and so you can look up

1  
2 those tags and do bulk exports. I actually sent, I  
3 attached to one of my motions the part of the manual  
4 where it shows the little box you click to include the  
5 audit trail logs in your bulk export.

6           And I think the final portion is, if the City  
7 has really produced these in such a haphazard manner  
8 that they can't even figure out what it is that they  
9 produced, that's on them. That's their problem, that  
10 is a mess that they have created through their own  
11 actions and it shouldn't now be any kind of barrier or  
12 burdensomeness argument.

13           So, in sum, I think we should get the audit  
14 trail logs, I think we should get them relatively  
15 soon, and it's important that we get them soon because  
16 we have a lot of people watching these body worn  
17 camera footage videos, and the audit trail logs give  
18 them a window into other information they should also  
19 be looking at like CCRB files, summonses, other officers  
20 who were there, explained in my letter. That makes the  
21 process, the review, easier, it makes it more thorough, it  
22 makes it easier to understand what you're looking at.

23           So really, I think we're being actively  
24 prejudiced by not having this, these audit trail logs  
25 right now.

1  
2 THE COURT: I need a little bit more background,  
3 Mr. Rickner, I think the letters assume a level of  
4 knowledge about the camera footage that I don't think  
5 was presented to me, or if it was it was presented in  
6 some other form at another time that I can't locate.  
7 So what, let's start from the beginning, what have  
8 you, what did you get and what was the volume, and  
9 what did it look like? In other words, did you get  
10 like, was it 600, I've seen the word 600 and 1,000,  
11 I'm not sure, what did you get, what did it look like,  
12 and how does the audit trail logs relate to it?

13 MR. RICKNER: Okay, so there's a few pieces to  
14 that. Initially, we got the body worn camera footage  
15 produced to us through a digital system where they  
16 would just give us the video files. The video files --

17 THE COURT: Stop right there.

18 MR. RICKNER: Okay.

19 THE COURT: This happened when and about how  
20 many?

21 MR. RICKNER: This happened during the course  
22 of the line officer depositions, so if my memory is  
23 correct, we're talking about starting June or July of  
24 last year.

25 THE COURT: Okay.

1  
2 MR. RICKNER: And they were pegged to, well at  
3 the time we thought we were getting footage that was  
4 relating to our specific plaintiff, like footage that  
5 would show our plaintiff, instead we got a larger  
6 production that I think was more like, well, we think  
7 this might have to do with your plaintiff. And we  
8 also, and so there was some repeats, but they came in  
9 large blocks, I think probably the largest of them for  
10 Sow was over 100 and I would say we got approximately  
11 50 or so of these, of these productions or these  
12 videos.

13 The --

14 THE COURT: Wait, hold on. Hold on, stop,  
15 stop, stop.

16 MR. RICKNER: Sorry.

17 THE COURT: You got a total of 50 on someone,  
18 is that what you're saying?

19 MR. RICKNER: I'm saying each --

20 THE COURT: Yes, go ahead.

21 MR. RICKNER: Each team got their own  
22 production of body worn camera videos that the City  
23 said were related to either a particular plaintiff or  
24 particular deponent. It's approaching 1,000 total, I  
25 think, and it came in multiple different tranches and

1  
2 I think there's also some substantial repeats there.

3 THE COURT: Okay, I assume, Mr. Rickner -- Mr.  
4 Rickner, I assume you're speaking on behalf of all  
5 plaintiffs now, right, I mean in terms of this issue?

6 MR. RICKNER: Yes.

7 THE COURT: Okay, good. So just so I, let me  
8 just get it in my head, there were approximately 1,000  
9 productions, some of which may have been duplicates,  
10 last summer, of, and a unit I guess is one particular  
11 officer on a particular day, that counts as one?

12 MR. RICKNER: Yes, that is almost always  
13 correct. If the officer turns their camera on and off  
14 more than once, there would be more than one video  
15 generated, but for the vast majority, you know, each  
16 unit is one video, the officer clicks on the body worn  
17 camera, it films, clicks it off, they put it in the  
18 docking bay and it gets uploaded automatically to  
19 evidence.com.

20 THE COURT: Okay. And what information did  
21 you have with respect to any given video, for example,  
22 officer's name, date, time, location, did you have all  
23 that or not?

24 MR. RICKNER: We could use, date we absolutely  
25 had, although the time was off because of the way that

1 the videos were produced, although we could surmise  
2 that it was always off by about four hours. That's  
3 actually something that's corrected in the audit trail  
4 logs. And obviously the date, we knew which protest it  
5 was. We generally knew the location, that was not  
6 universally true which is why we were pursuing GPS  
7 data because sometimes we couldn't figure it out. And  
8 we sometimes knew the officer but often didn't, they  
9 produced a spreadsheet that you could look at the  
10 times of the video and click through and try to  
11 guesstimate as to which officer may have been  
12 producing, may have been wearing that particular  
13 camera. But we definitely couldn't figure it out for  
14 all of them and, in fact, when we chose the examples  
15 we picked ones that, for the most part, we couldn't  
16 figure out. So sometimes we could figure out who the  
17 officers were with a fair amount of effort, and  
18 sometimes we couldn't figure out their names.

20 THE COURT: Okay, so the, I'm trying to find,  
21 do you have a letter with the sample audit trail logs,  
22 do you remember the docket number?

23 MR. RICKNER: That was the, that was the most  
24 recent one and, hold on --

25 THE COURT: 385 maybe?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. RICKNER: 385, yes.

THE COURT: Okay. All right, so let me just look at -- so this very first exhibit to your letter is an audit trail log?

MR. RICKNER: Yes, that's correct.

THE COURT: Evidence audit, evidence audit trail, okay.

MR. RICKNER: Yes.

THE COURT: So is this associated with a particular recording?

MR. RICKNER: Yes, it is.

THE COURT: Every audit trail log pertains to one recording.

MR. RICKNER: Exactly.

THE COURT: And so someone at some point did something to put all this information and associate it with a recording, is that what happened?

MR. RICKNER: Yes, although it's almost, I'd say, even better than that because the way the evidence.com evidence system works is if you look there's a source, a particular device name, it starts with an X, it says X81 and a string of digits.

THE COURT: Yep. Yep.

MR. RICKNER: That's a specific camera, so

1 after their shift the officer who is wearing the  
2 camera puts it in the docking bay, it's automatically  
3 uploaded to evidence.com, it's supposed to be tamper  
4 proof up until that point, so really you get the nice  
5 pristine body cam footage. And then the audit trail is  
6 actually automatically generated by the system,  
7 obviously there's additional information that's added  
8 later like the tags, but we can look at the camera footage  
9 and we see that device name, the X81 and then, you know,  
10 ideally when we get all of the audit trails, if you, our  
11 order is granted, we can control that search for the  
12 device name and, boom, now we get the history of that  
13 piece of body worn camera footage.

15 And it's meant to work like the evidence locker  
16 for physical evidence, right, so you can tell everything  
17 that's happened. If there's been an excerpt that's  
18 loaded, that's identified, if there's tags, that's  
19 identified. And, you know, as it says in the letter,  
20 there's various ways this is useful.

21 THE COURT: Right. So the camera, this audit  
22 trail log is not associated with any particular date, it's  
23 associated with a camera, and then each date it gets  
24 docked the date gets added trail, is that it?

25 MR. RICKNER: No, that's not it, each video



1  
2 generates its own audit trail log, so, but the camera and  
3 the camera being placed in the dock is sort of the  
4 triggering event, but then every single file that they  
5 produced on evidence.com has an audit trail that looks  
6 just like --

7 THE COURT: I see, I'm just trying to  
8 understand, so this audit trail is all about one  
9 particular piece of footage, in this case the first one it  
10 looks like is an hour and a half long and it's all the  
11 things that happened to this footage on evidence.com?

12 MR. RICKNER: Yes, including --

13 THE COURT: Right, okay.

14 MR. RICKNER: Yes.

15 THE COURT: Go ahead.

16 MR. RICKNER: One more point that I think is  
17 important, all of these different tags like the  
18 categories, demonstration, civil disobedience, those are  
19 all searchable because this software is designed, and  
20 it's well made, it's designed to keep track of this  
21 information. And so --

22 THE COURT: Okay.

23 MR. RICKNER: You can search it and then you  
24 can bulk download it.

25 THE COURT: Okay, so when, I'm just trying to

1  
2 figure out what, unfortunately you may now, now that I  
3 understand this a little better you may need to repeat  
4 some things. So you are looking for the audit trail  
5 logs for the material that was already produced to you  
6 last summer, is that it, for that thousand videos --

7 MR. RICKNER: Yes.

8 THE COURT: Of which many are duplicates?

9 MR. RICKNER: Well we believe some are. I  
10 should mention, because we sort of got cut off a  
11 little in our conversation, there is then a second set  
12 of body worn camera productions or second  
13 (indiscernible) body worn camera production, we, in  
14 effect, complained that we didn't think we had  
15 everything and then we got another, much more  
16 recently, I think in the last two months, a production  
17 of 600 or so body worn camera videos which some were,  
18 some were already produced according to the City  
19 although we don't know which ones without doing a  
20 manual compare and some were new. So the universe  
21 we're looking for is, is all of those really. If  
22 they've produced it to us we would like the  
23 accompanying audit trail so we can start working out  
24 what we've got.

25 THE COURT: Right. Okay, all right, so I'll

1  
2 hear from the City.

3 MS. WEISS: Yes, Your Honor, it's Dara Weiss  
4 again. I just want to clarify a couple of things that  
5 Mr. Rickner said. The first actions of body worn  
6 camera footage were produced actually well before the  
7 line officers' depositions, they were produced, if I'm  
8 not mistaken prior to the plaintiffs' depositions.  
9 Plaintiffs' counsel insisted that they be provided  
10 with body worn camera footage before each of their  
11 plaintiffs were deposed. Because we didn't have a  
12 system in place, an electronic system in place yet for  
13 providing them, we actually just sent the videos  
14 themselves through a secure email system. They hadn't  
15 been Bates numbered in any way or with any other  
16 identifying information, we were just trying to get  
17 them the videos as quickly as possible so they could  
18 have them before their clients' depositions.

19 Then when plaintiffs noted they were having  
20 trouble figuring out certain information about the  
21 videos, we started sending them spreadsheets that  
22 showed the name of the video, which officer was taking  
23 it, and there might have been a little bit more  
24 information, I think the time of the, the length of  
25 the video. And then plaintiffs asked for the

1  
2 production of these same videos through an electronic  
3 system where they would be Bates numbered and further  
4 identified so we did that, which is why there are  
5 duplicates of some of the videos. And I am pretty sure  
6 that when they were sent they were noted that these  
7 are just reproductions of the videos that were  
8 provided earlier.

9           It's entirely possible that there are  
10 duplicates of videos or things that seem like  
11 duplicates because the way the system works is that if  
12 a certain officer, if their bodycam video is searched  
13 the system is going to also provide the names of  
14 officers who are within a certain distance of that  
15 target officer and who also had their video on, so we  
16 would have provided that as well. So that can  
17 certainly make it, if two officers were near each  
18 other recording something, it would certainly make it  
19 look like it could be the same video but it likely is  
20 not.

21           We did provide the sample audit trail logs and  
22 it was when Mr. Rickner brought it to our attention  
23 during a meet and confer we immediately sent it over.  
24 But as you can see, there's a lot of information on  
25 these audit trails that's completely irrelevant and

unnecessary. There certainly is the information in the beginning about the officer's name and when they took the video and when they downloaded it, but the bulk of this information is what happened to it afterwards, mostly as a result of obtaining it to provide in discovery in these lawsuits or for CCRB or other internal purposes.

If plaintiffs, it seems like the reason the plaintiffs are claiming they need these audit trail logs is so they can tell one video from the next and two took a video and if they'd seen it before in their review. But these audit trail logs really provide substantially more information that's just not relevant or necessary for these cases. As mentioned, we, the City provided spreadsheets that gives --

THE COURT: Ms. Weiss, if I could just make life simple, as long as there is some information on here that I find is relevant, I assume it's easier for you just to produce the whole thing than to go over it line by line with a black felt marker taking out some potentially irrelevant material.

MS. WEISS: Well, certainly, Your Honor, if you're looking at the audit trail you could see what a burden that would be. But I just, although, I

1  
2 personally was not aware of the bulk download issue, I  
3 do know that it's not difficult to actually press the  
4 button and print these things, but there are so many  
5 of them that we have produced that we've given the  
6 relevant information that I don't think that there's a  
7 need to, you know, kind of press the button for  
8 everything.

9           The other thing that I'm concerned about is  
10 that although it may be true that you can simply do a  
11 search by a category such as demonstration or civil  
12 disobedience, it's entirely possible that that would  
13 produce audit trail logs that are for things that are  
14 not at issue at this case or audit trail logs for --  
15 I'm sorry, I'm having trouble sort of articulating  
16 this so I apologize, but simply putting in a category  
17 is not going to necessarily produce the audit trail  
18 logs for the videos that were produced. In order to be  
19 sure to produce the audit trail logs for the videos  
20 that were in fact produced, they have to be done one  
21 by one. It's possible that a wrong category was put in  
22 and then you'd come up with a bodycam video audit  
23 trail log of something that is not part of these cases  
24 or, you know, if bodycam footage was taken, for  
25 example, of --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Okay, you're going into all this because they proposed a way to get around doing it one by one and you're saying that won't work, is that why you're getting into this?

MS. WEISS: It's my understanding that that's not going to be accurate and that they have to be done one by one.

THE COURT: Hold on, let me just, I've got to talk to Mr. Rickner, hold on. Mr. Rickner, you're happy to just get the audit trail logs for the videos they produced to you, I assume you're not, I'm not sure what's going on here about searching audit trail logs in general?

MR. RICKNER: Well --

THE COURT: Is that the one you asked for?

MR. RICKNER: Well, yeah, I mean the way to get the audit trail logs that we're looking for is through a search function. This is an ordinary ESI issue, they have tags on these logs, they actually have a specific locker in the Law Department. The Law Department has an evidence.com access code with body worn camera footage that they've produced in this case that's actually tagged, you can see it in some of the logs. The point is tell us what searches you're going

1  
2 to run, we'll look at it, produce the bulk audit trail  
3 logs to us after those searches have been performed  
4 and give it to us. And don't let the perfect be the  
5 enemy of the good. If there's one that's missing,  
6 we're not going to run to Court, we're just going to  
7 email Dara and say, okay, camera XYZ looks like it  
8 wasn't captured in one of the searches but it's really  
9 important, can we get it, and that solves the problem.

10 THE COURT: So you would do some search in  
11 this time period for demonstration or something like  
12 that, is that it?

13 MR. RICKNER: I mean I'd need to know which  
14 tags that the Law Department had used, but, yeah, we'd  
15 work it out. It's not impossible to get vastly all of  
16 the information.

17 THE COURT: So, to you, that's better for you?  
18 The way I was originally imagining this was you were  
19 going to give them a list of 600 or something device  
20 names and dates and you were going to have them, and  
21 times, you know, you were going to identify recordings  
22 and then they were going to find the log and then  
23 print it out one by one and you're saying that's not  
24 what you're seeking?

25 MR. RICKNER: That's not what we're seeking



1  
2 and, in fact, to catalog all of that information would  
3 be an immense burden on plaintiffs.

4 THE COURT: I see.

5 MR. RICKNER: Instead, we want them --

6 THE COURT: So no one, neither the plaintiff  
7 nor the defendants want to have someone push a button a  
8 thousand times, is that correct?

9 MR. RICKNER: Correct. Yes, absolutely.

10 THE COURT: Okay. Because I was having trouble  
11 figuring all this out. Okay, so back to Ms. Weiss, no one  
12 is having you push a button a thousand times which is what I  
13 thought I was hearing you tell me.

14 MS. WEISS: That's why I'm just -- sorry.

15 THE COURT: So what they're asking for, and I'm  
16 just looking at this first one, it has a category, you know,  
17 demonstrations, civil disobedience, whatever, they're asking  
18 you to do a search for that during the time period and just  
19 produce those audit trail logs. That seems unburdensome,  
20 what's the problem?

21 MS. WEISS: That is not burdensome but that is  
22 likely to be inaccurate, because these videos can certainly  
23 be mistagged or not have a tag, or other irrelevant videos  
24 could be mistagged with a demonstration tag. The tag is  
25 helpful overall, but it's not, it is certainly not going to

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

--

THE COURT: So what? So what if it's inaccurate, what do you care, unless you'd rather figure out the thousand videos you produced and press a button a thousand times, if you want to do that, hire someone to do that in the next week, that's your alternative.

MS. WEISS: No, Your Honor, we certainly don't but we're loathe to provide inaccurate information because that, once again, puts us --

THE COURT: You're not providing inaccurate information, you're providing you think potentially irrelevant, but let's run it and then you'll figure out whether that's true or not.

MS. WEISS: I just don't think that that is a good way to go about this. I don't know what the best way is.

THE COURT: Why?

MS. WEISS: Because, Your Honor, I don't --

THE COURT: Why don't you tell me a better way?

MS. WEISS: To not provide the audit trail logs for the body worn camera that has been previously produced except for in the most recent batch of 600 or so we know which are the new ones, we can certainly

1  
2 give that. But like I said earlier, we provided the  
3 information including the names of the officers, when  
4 the body cam produced was taken, so I don't think that  
5 this information is necessary.

6 THE COURT: Okay, the relevance objection is  
7 overruled, it sounds like we have a plan that's not  
8 going to be burdensome at all. Let's see what running  
9 the search produces. If, you know, if it's more or  
10 less matching what was produced already then that's  
11 going to be great, if it's vastly uninclusive or over  
12 inclusive, there could be, you know, discussion about  
13 that, it could be produced under a confidentiality  
14 order certainly since there may be some irrelevant  
15 material in there. So that's my ruling on that.

16 This seems like something that should be done  
17 relatively quickly, to at least do a run of this,  
18 because it's a very, a very closed system and very  
19 limited search terms. So I'm going to require this to be  
20 done in the next two weeks.

21 Anything else, Mr. Rickner?

22 MR. RICKNER: Yes, I'd like to know what searches  
23 that they're running.

24 THE COURT: Yes, you need to work, Ms. Weiss, you  
25 need to work with Mr. Rickner on the actual search terms,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

you should talk about that as soon as possible. If you haven't figured it out in the next few days you need to write me, Mr. Rickner, you need to write a joint letter giving the defendants' position so I can quickly rule on search terms.

MR. RICKNER: Yes, Your Honor, and I would ask that that meet and confer be attended by the people from the NYPD who came last time who were very familiar with the technology and knew exactly how it worked, which is how we made progress initially.

THE COURT: Certainly makes sense that only people who know exactly how this works should be involved in discussing how to deal with it. Yes, so ordered.

MR. RICKNER: Thank you, Your Honor.

THE COURT: Ms. Weiss, anything else?

MS. WEISS: No, Your Honor.

THE COURT: Okay, that's 379.

MR. RICKNER: Well would you like to discuss the sanctions issue that was also part of 379?

THE COURT: Oh, gosh, I'm sorry, I'm, I apologize, you're absolutely right. Okay --

MR. RICKNER: Well I will --

THE COURT: Hold on, hold on. Go ahead.

MR. RICKNER: I would say I'll try to make

1  
2 this brief.

3 THE COURT: No, no, give me a second to, give  
4 me a second, I just need to re-read my order and so  
5 forth, hold on.

6 MR. RICKNER: Yes, Your Honor.

7 THE COURT: Okay, go ahead.

8 MR. RICKNER: Thank you, Your Honor. So going  
9 to the sanctions issue, it seems, it seems that one of  
10 the major thrusts of Ms. Weiss' arguments is that she  
11 doesn't have time, and I think it's worth noting that  
12 this particular issues, the body worn camera issue  
13 and, in fact, the meet and confer where we got into  
14 the technical specifications was being handled by  
15 attorney Alyssa Jacobs. And she actually made good  
16 progress. In fact, in the September 28<sup>th</sup> email that I  
17 mentioned before, she says we are in the process of  
18 obtaining those four audit trails that should allow us  
19 to continue our discussions, and she said I have one  
20 that I expect in the next, quote, "In the next few  
21 days." Now this is months ago now.

22 This was good progress. The problem is, is  
23 that Ms. Jacobs was reassigned to other cases. There  
24 is, she moved to withdraw. And actually if you go to  
25 the motion, this was October 22<sup>nd</sup> and it's docket

1  
2 number 296, in that motion Ms. Jacobs and another  
3 attorney for the Law Department who was also very  
4 senior and working on this case said don't worry, this  
5 case won't be understaffed if we leave. I'm  
6 paraphrasing but that was the thrust of the statement.  
7 And that wasn't true.

8           And so I understand that this may be, you  
9 know, dealing with all of this information may be  
10 personally unpleasant for Ms. Weiss, but this is a  
11 specific set of decisions by the Law Department and  
12 the NYPD as to where to place the resources and what  
13 resources to obtain. If you put it all on one lawyer  
14 maybe, yes, that lawyer gets overloaded, but that  
15 doesn't mean that the plaintiffs are wrong for asking  
16 for all this material, it means you need more staff.  
17 And so I think, you know, the primary explanation for  
18 why this wasn't done really falls apart when you look  
19 at this as a larger issue and go, yes, they need to  
20 put more lawyers who know what's going on and  
21 certainly shouldn't be taking lawyers off this case.

22           Now, again, you know, as far as, you know,  
23 priority, and I think I made this point earlier, in  
24 fact, Your Honor did, which is Court orders go to the  
25 top of the pile, they're not the equivalent of, you

1 know, the emails, and (indiscernible) as part of  
2 discovery. And so this particular order should have  
3 gone to the top of the pile. And we know it wasn't  
4 ultimately that hard to comply with because after I  
5 filed the motion we got the documents the next  
6 morning. The problem is, is that whatever it took  
7 between the City and the NYPD to make that happen  
8 didn't occur when it should have. So really, again, I  
9 don't think the idea that this was somehow burdensome  
10 and that's why it didn't work out, holds any water.

12           And, further, this is really a, this whole  
13 dispute is a microcosm of what we've been facing in  
14 every discovery dispute. We cannot rely on the City  
15 to take clear positions, we end up not finding out  
16 what their true position is until motion practice or,  
17 in this case, apparently Ms. Weiss forgot about the  
18 earlier position they had taken on burden and then,  
19 you know, changed their mind again in motion practice.  
20 We just can't make progress if that keeps happening.

21           They promised to give us documents of  
22 information. We have, they never really objected to  
23 the sample logs and we have email after email where  
24 either Ms. Jacobs or Ms. Weiss is saying, oh, don't  
25 worry, we're going to get them to you shortly, we're

1 looking into it and it just never happened. So we  
2 can't rely on them when they say they're going to do  
3 something in the meet and confer, that they're  
4 actually going to do it. And compounding this and  
5 also this appeared with the body worn camera footage  
6 issue generally, we spent two months almost I think  
7 scheduling the meet and confers, not regarding the  
8 Court order but following the Court ordered meet and  
9 confer where we needed to do all the follow-up and  
10 build on the progress we had made, they just won't  
11 schedule them. This was part of another motion that  
12 Mx. Green put in and that I think detailed it fairly  
13 well.  
14

15           And then when we finally get fed up and we  
16 file motions, sometimes more than one, Aviation took  
17 two motions, body worn camera took two motions, these  
18 are key documents where we're applying to the Court  
19 multiple times, they don't follow the orders. Or they  
20 don't take any action until, in candor, it looks like  
21 they're obviously going to lose a motion and they  
22 decide, gosh, you know, quick, I may just well try to  
23 fix this. We have experienced this at every level  
24 really, you know, every single one of those complaints  
25 that I've made could be applied entirely or at least



1  
2 in large part to all of the discovery requests. And  
3 that is why, you know, we're facing this, you know,  
4 very strict schedule and, you know, the plaintiffs are  
5 panicking, because we aren't getting information we  
6 need in the time to use it in depositions, in time to  
7 analyze it and understand how it fits with the larger  
8 case, and it's really created a lot of burden.

9 I mean, so, yes, we've been filing a lot of  
10 letters and making a lot of requests, but we don't see  
11 a choice. They have forced this, they have forced us  
12 into this through the multiple deficiencies in the  
13 actions that I've outlined. So I think a sanction  
14 needs, and, you know, we can maybe talk about this as  
15 a larger issue, but there needs to be a sanction that  
16 is sufficient to get them to knock it off.

17 THE COURT: Ms. Weiss?

18 MS. WEISS: Your Honor, respectfully, as I'm  
19 sure the Court knows and plaintiffs' counsel, I am not  
20 the only attorney on this case. These cases are fully  
21 staffed by a full team of attorneys and paralegals  
22 plus a lot of non-team attorneys who are doing  
23 specific tasks. Part of the problem is that earlier on  
24 Your Honor told the plaintiffs that when they have  
25 issues they should have one attorney dealing with the

1  
2 issue write to us or contact us with all of the issues  
3 once a week or once every two weeks or whatever the  
4 time period may be. That's not happening. We're  
5 getting dozens and dozens of emails and letters and  
6 requests for meet and confer all by different  
7 attorneys on different individual cases. These are  
8 supposed to consolidated for discovery but plaintiffs'  
9 counsel are supposed to act as one with respect to  
10 discovery. It's not happening and although we're  
11 certainly not missing out on things or we're ignoring  
12 things, we're not ignoring things at all. Any missed  
13 deadlines are simply inadvertent, but we're really  
14 trying to scramble to keep up with plaintiffs'  
15 onslaught.

16           And, you know, this goes into Mx. Green's  
17 letter as well, we want to get these documents and  
18 this information to plaintiff, plaintiffs. They're  
19 making it very, very difficult because we're spending  
20 an inordinate amount of time responding to them rather  
21 than having the time we need to actually get these  
22 documents, review them, get them out to plaintiffs  
23 while still trying to defend our clients. It's, it's  
24 constant and it's impossible to keep up with because  
25 the plaintiffs are, instead of acting like a

1  
2 consolidated group of cases and a number of these  
3 cases actually asked to be consolidated into these  
4 actions, they're still, they're still litigating these  
5 cases in large part like they're individuals cases.  
6 And it's, it's unfair to defendants to try to ask us to  
7 keep up.

8           And then when we try to concentrate on one issue,  
9 if another issue falls by the wayside we then have those  
10 counsel coming up to us and insisting. We can't do  
11 everything at once, things have to happen in an order, and  
12 the last few weeks have really, really been, really since  
13 the start of the year but the last two weeks especially,  
14 it's just been constant and not possible for us despite our  
15 full and fairly large team of attorneys working on this.

16           So, you know, we certainly apologize, we certainly  
17 in no way meant to ignore any kind of order but it happened  
18 and it was missed, and we would love to find some sort of  
19 way to, to I guess, I understand plaintiffs have their  
20 issues and we're happy to hear them, but some sort of  
21 orderly way to do it so we have everything in front of us at  
22 once instead of piecemeal so we can deal with it that way.

23           (interposing)

24           THE COURT: Sorry? Mr. Rickner?

25           MR. RICKNER: I'm sorry, Your Honor --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Go ahead, Mr. Rickner. Actually, Ms. Weiss, you were done, right?

MR. RICKNER: I'd just like to correct --

THE COURT: Hold on, Ms. Weiss, you were done, right?

MS. WEISS: Well I just wanted to conclude by saying, you know, based upon the good faith the defendants are trying to engage in, I don't think that sanctions are appropriate.

MR. RICKNER: I'd like to correct the record, Your Honor, on one specific issue. We have not been spreading different discovery issues across different teams. The body worn camera audit trail logs are a perfect example. This has been, for better or worse, my problem from the beginning, I'm on the Sierra team, I have one protest, not all 83, but I've been -- but I didn't limit my demands to that protest. I worked with everyone, I've been on all the meet and confers on the issue which, mind you, the City, in fact, has shifted around who's on the meet and confers, but I've handled this, you know, pretty much from start to finish, I've always been the point person on communicating about this with the attorneys assigned and that's the way we do it every time.

1  
2           So somebody has Aviation, actually that was  
3 me, as well, so that's a bad example. Somebody has the  
4 audit trail logs. Somebody has disciplinary records.  
5 And it's really always been the same attorney on one  
6 of the consolidated teams who's followed up. So the  
7 accusation that we're somehow picking an issue and  
8 coming at it with five different people throwing  
9 emails at Ms. Weiss or the rest of defense counsel,  
10 that's not true. That's not what we've been doing.

11           And I'd also like to note, it has taken a  
12 remarkable amount of coordination on the plaintiffs'  
13 side, we aren't always in agreement, to always present  
14 a unified front with one person handling each issue.  
15 Almost always. I mean I can't say we've always been  
16 perfect but 95 percent of the time, we've worked  
17 together internally and then put one person up to  
18 handle it.

19           THE COURT: All right, let me do what's  
20 simple. What's simple is I issued a very clear order  
21 requiring documents to be produced and the City failed  
22 to comply with it. The excuse I have heard is  
23 certainly not sufficient for that. It does not show,  
24 it does not show substantial justification or any  
25 other circumstances that make an award of expenses

1 unjust. So with respect to the failure to comply with  
2 the order, Mr. Rickner, your, I'm awarding as a  
3 sanction your attorney's fees for having to write me  
4 the letter, I guess your letter of February 8<sup>th</sup>, and  
5 any other related time for that. So if you can make a  
6 presentation by letter to me at some point to get  
7 those fees and so we can specify the amount of those  
8 fees.  
9

10 MR. RICKNER: Yes, Your Honor.

11 THE COURT: With respect to the substantive --  
12 okay, with respect to, and by the way, I suggest you  
13 show it to the other side and maybe they'll agree on  
14 the amount and then I won't have to be involved. With  
15 respect to the overall issue of the production of the  
16 body worn camera audit logs, I'm not happy certainly  
17 with the City's conduct during that, I'm on the fence  
18 about it, I'm going to reserve sanctions on that, I'm  
19 going to see how things go otherwise and I reserve the  
20 right to issue sanctions with respect to that course  
21 of conduct but at this point I'm not going to be doing  
22 that today so that's being reserved to another date.

23 Let me just address what Ms. Weiss said, it's  
24 probably going to come up with Mx. Green, the notion  
25 that it's unfair to ask you to keep up with discovery

1 issues is completely unacceptable. If the case is not  
2 sufficiently staffed, it needs to be sufficiently  
3 staffed. Ms. Pestana is an extremely competent  
4 administrator and attorney and if the demands are  
5 large enough that more staff is needed she will  
6 understand that, you need to present that to her. You  
7 need to suggest to her that I've raised this issue  
8 with you. It's not acceptable for you to say that, and  
9 I'm now quoting you, "It's unfair to defendants to ask  
10 us to keep up with the discovery demands here." The, if you  
11 had come to me and said that there were, you were getting  
12 different signals from the plaintiffs, that you had two  
13 different attorneys asking for the same thing and  
14 doing it in different ways, I want to hear about that  
15 immediately, that that is unfair. But if there are 10  
16 discovery issues or 15 discovery issues and they're  
17 being presented by 4 or 5 lawyers, that's not, that's  
18 not a grave problem it seems to me. You're certainly  
19 welcome to have a single conference with each, they're  
20 all required to speak when you want to meet and  
21 confer, if that scheduling makes it easier for you,  
22 but there's no point in, as long as they're keeping to  
23 the notion that the discovery requests or discovery  
24 disputes, each one is being handled by a single

1 attorney, that's nothing to complain about, they don't  
2 all have to be handled by one attorney.

3 And as I said, you know, if there's a problem,  
4 the solution is not to ignore Court orders and refuse  
5 to meet and confer, I mean there is a whole litany of  
6 that here. The solution, if it's a problem, is to come  
7 to me and say here's how to make this more efficient,  
8 we need to have it done some particular way, you know,  
9 these two attorneys are across purposes and we can't  
10 keep up with that.

11 It doesn't surprise me that in a case like  
12 this, I think you said there were nine attorneys on  
13 it, one person may just be responsible for dealing  
14 with the discovery disputes and that might involve a  
15 lot of meeting and conferring during the week, so that  
16 shouldn't be a big surprise. And part of the reason,  
17 from what I can tell from the letters, that we need so  
18 much meeting and conferring is that the City is not  
19 giving definitive positions on things.

20 You know, I'm ready to decide disputes about  
21 what is burdensome and what is not burdensome but the  
22 City has to get to the point where it can articulate  
23 exactly what the burden is which almost never happens.  
24 Even when it comes to me there is just this sort of  
25



1  
2 generic statement about this is burdensome without  
3 saying, you know, what's involved, without saying how  
4 many hours are involved, how much personnel is  
5 involved. At the bare minimum the City has to figure  
6 out, if it's going to be making these objections, what  
7 actually is the burdensomeness objection, I'm almost  
8 never getting that. So from the record presented to  
9 me, and the record from the City is extremely thin, I  
10 get very detailed letters from the plaintiffs  
11 describing at length, you know, refusals by the City  
12 to meet and confer, cutting off a session after an  
13 hour and a half that involves a lot of issues, the  
14 City never denies any of this, never responds, never  
15 explains. And if the only explanation is going to be,  
16 well, we can't keep up, that's just not an acceptable  
17 explanation. What's going on here is just of the  
18 character of what might be expected in a case like  
19 this.

20           Okay, so that's my ruling as to 379. I think  
21 what we have left is 369, the prior (indiscernible) so  
22 I'll turn it over to Mx. Green.

23           MX. GREEN: Thank you, Judge. I think there  
24 are a couple of things in the letter, I'm happy to try  
25 to address them all at once or if you'd rather, as we

1  
2 did before, we can start with the merits of --

3 THE COURT: Yes, I was a little unprecipitous  
4 and I apologize because I had forgotten that I had  
5 promised you a reply date on the issue of the 2002 and  
6 prior documents. So I apologize, I read your letter, I  
7 thought of it as a reply, so I'm ready to deal with  
8 the merits of that.

9 MX. GREEN: Okay.

10 THE COURT: I should have asked what you meant  
11 by the merits.

12 MX. GREEN: Exactly, Judge.

13 THE COURT: Okay, so why don't we discuss  
14 that, then I'll hear from Ms. Weiss, and then I'll  
15 make a ruling on that.

16 MX. GREEN: Okay, I think one of the just  
17 core, call it, themes of this case is that this is  
18 what the NYPD has done forever, they have engaged in  
19 the same practices, sometimes they give them new  
20 names, sometimes they rename the units that are doing  
21 it, but at the core they have over more than 20 years  
22 engaged in a policy of brutalizing protestors, of  
23 intentionally intending to "disburse and demoralize,"  
24 those are quotes from a Power Point presentation  
25 during the Work Economic Forum, protestors, rather

1  
2 than facilitating First Amendment expression.

3 I think that, while it's certainly important  
4 and I don't think that, you know, we would conceded we  
5 can't make our case without World Economic Forum and  
6 that era of protests, I think that that is the most, I  
7 mean more than Republican National Convention, I think  
8 that that's probably the most important origin point  
9 for a lot of the policies that we intend to track  
10 through time. I'm not going to say on the record or on  
11 a public call what has been designated confidential,  
12 but the, the quote that was redacted in my letter I  
13 think speaks directly to that.

14 Beyond that, you know, separating the  
15 Republican National Convention from the World Economic  
16 Forum is somewhat artificial given that, you know,  
17 the, all of these sets of litigations dragged out for  
18 a decade each. And so the documents all overlap, I  
19 mean the question is just when, when is the start date  
20 for collection. And as far as, I think it seems to me  
21 that it's obvious that it's relevant, it's important,  
22 being able to say that, that it has happened across  
23 three major eras of protests is, you know, much better  
24 at trial than being able to say it happened over two  
25 major eras of protest, right? Whether it's literature

1  
2 or art or comedy, we all talk about a rule of three  
3 sometimes.

4 I think, the question is what's the burden,  
5 and as you just said, we haven't heard even a word  
6 about the burden. And I think this is, that's  
7 particularly significant because at the very first  
8 discovery conference, Ms. Weiss, in complaining about  
9 the scope of our request, specifically identified the  
10 World Economic Forum as something that they were  
11 looking at doing, right, they were looking at getting  
12 those documents and said, and said to the Court that  
13 she didn't know then what the burden of doing it was.  
14 And despite, you know, a specific direction from the  
15 Court to respond to all the arguments in our letter,  
16 we still have no idea what the burden of doing it is.

17 I think that relevance is not really at issue,  
18 the question is maybe proportionality and burden and  
19 at this point I don't see how the City hasn't waived  
20 it. We had to make motions about compliance with the  
21 2015 amendments earlier in the case where the Court  
22 specifically, I think, identified burdensomeness as  
23 something they'd have to object to with specificity and  
24 tell us if they were refusing to make certain searches.  
25 The Court also ordered algorithm letters during which they

1  
2 did not say a word, not one word about what they weren't  
3 collecting from the World Economic Forum. And, you know, I  
4 do not see how in good faith they can assert that these  
5 objections are preserved, let alone meritorious. So that's  
6 the merits.

7 THE COURT: Okay, so just turning to the 2002  
8 and earlier, Ms. Weiss?

9 MS. WEISS: Yes, Your Honor. So I think that,  
10 so the defendants had objected initially back to times of  
11 even the Republican National Convention in 2004 as being not  
12 proportional. Plaintiffs then, after Judge McMahon issued  
13 her order on the City's motion to dismiss, she specifically  
14 mentioned the relevance, I suppose, of the Republican  
15 National Convention to the claims or mentioned the  
16 Republican National Convention.

17 So the defendants withdrew that part of their  
18 objection and offered to produce materials with, certain  
19 materials with respect to the Republican National  
20 Convention. But, and plaintiffs used Judge McMahon's order  
21 trying to convince us to provide materials from as far back  
22 as the Republican National Convention, that's the date that  
23 they used at that time. It's really hard to fathom how  
24 events that happened 20 years ago are relevant to events  
25 that happened so much more recently.

1  
2           There is, the police department is a completely  
3 different place now. There, there have been many changes  
4 between the time of the Republican National Convention and  
5 today. It's, I don't see how policies that went back that  
6 far could possibly have relevance today. In addition, as we  
7 have learned recently as we're collecting materials from the  
8 Republican National Convention and other demonstrations and  
9 protests and related lawsuits, burden is incredible. We're  
10 having difficulty obtaining documents from the Republican  
11 National Convention because it was so long ago, they exist  
12 but they're not all electronic. Papers are likely archived.  
13 Part of the, part of the discussions in producing those  
14 documents was that we in our office at the Law  
15 Department were going to try to go through our files  
16 and see what we still had from those litigations  
17 because it's likely that we would have gotten anything  
18 from New York City Police Department that the  
19 plaintiffs are looking for here.

20           It turns out that the database that we had  
21 them on is no longer in existence. Paper documents  
22 would be archived and not easy to access. Documents  
23 from the World Economic Forum were even older. They're  
24 not electronic formats at the New York City Police  
25 Department. There were a couple of them but they would

1  
2 generally be paper documents. Anything in our office  
3 from those lawsuits which I expect would have the  
4 types of documents that plaintiffs are looking for are  
5 not even, they're so old that they're not even on our  
6 most basic sort of electronic file system that we use  
7 every day. I was involved in a couple of those cases  
8 and if I try to bring them up on our internal system  
9 they're not even there.

10           So I think, besides the fact that those events  
11 were so distant in time to the ones at issue here, and  
12 the burden of trying to track down these papers  
13 documents from archive and find the relevant  
14 documents, it's really, you know, it outweighs the  
15 relevance. Plaintiffs are going to have documents from  
16 2004 and actually even a little bit before 2004, which  
17 include some of the planning type documents for the  
18 Republican National Convention, it just seems like an  
19 added burden to what's already burdensome to try to  
20 get documents that are even older.

21           MX. GREEN: Your Honor --

22           THE COURT: No, no, no, no, hold on.

23           MX. GREEN: Okay.

24           THE COURT: So explain the paper archive  
25 process, Ms. Weiss, how does that work, how do you

1  
2 find out about documents, what does it take to get  
3 them, what's the issue?

4 MS. WEISS: So from, I know how it works in my  
5 office. The cases are closed, they're boxed up  
6 hopefully with the name of the case on the box, and  
7 they are brought to an offsite warehouse. I know from  
8 the WEF cases there's got to be at least 100 boxes.  
9 There is unlikely going to be any sort of index of  
10 what's in each box and I also don't know what, you  
11 know, the extent that all documents were properly  
12 filed and saved, I'd like to assume that they're all  
13 there but I know generally when we request boxes out  
14 of archive it takes some time to come. I haven't done  
15 it since, since the pandemic started so I don't  
16 exactly know what the timeframe is on that. But then  
17 it would take significant or support staff hours to go  
18 through those boxes and try to find the relevant  
19 documents. I don't know exactly how it works from the  
20 police department's standpoint, unfortunately, but I  
21 do know --

22 THE COURT: That's going to be the more  
23 targeted documents, I mean, if they have, you know,  
24 plans, operational plans, whatever it is.

25 MS. WEISS: I do, I do know from other cases



1  
2 that police department archives are a similar system,  
3 they're boxed up and sent to either offsite archives  
4 or sometimes I know, for example, I had a case where  
5 documents were placed in a basement of a precinct and  
6 it just so happened that there was a flood and they  
7 were destroyed. I think actually during Hurricane  
8 Sandy but I'm not saying that that's happening here. I  
9 don't know where these boxes are archived, but when  
10 they're not saved electronically, it's just many, many  
11 hours --

12 THE COURT: Well, Ms. Weiss, this is very  
13 disturbing because this issue's been on the radar for  
14 months. It seems like you should know what the burden  
15 is exactly for what they're asking, what you could and  
16 what you could not do, why don't we have the answers  
17 to those questions?

18 MS. WEISS: Well, Your Honor, because we have  
19 been concentrating on the documents from the  
20 Republican National Convention which --

21 THE COURT: Well as to those, let me ask as to  
22 those, as to those documents, what's the, are you  
23 giving up on the NYPD, are you just producing from the  
24 Law Department, what's going on with those?

25 MS. WEISS: No, Your Honor, not at all, but

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

they, the documents have been requested. Hopefully they're somewhere on, at least some of them are on, have been saved electronically. We've provided previous --

THE COURT: At the NYPD?

MS. WEISS: Yes. We've already provided certain documents --

THE COURT: Is there more to be found at the NYPD?

MS. WEISS: There's things like after action reports, there's a few specific documents that I know Mx. Green has spoken about that we were hoping would be exhibits to certain depositions which we did produce. We produced the depositions, unfortunately the exhibits were not contained along with them. They're in the Law Department database that no longer exists that had been made specifically for the RNC cases. But we --

THE COURT: Are they in an identified box?

MS. WEISS: I, I do not believe so.

THE COURT: Who, who's responsible for looking for all this?

MS. WEISS: It would be myself and my team for the Law Department, and then we have liaisons at NYPD who

1 search for documents or assign searches for documents.

2 THE COURT: I, the vagueness here is  
3 incredible to me. I mean you need to, I mean are the  
4 exhibits, for example, for the depositions in an  
5 identified box that's in an archive that can be  
6 ordered or not --

7 MS. WEISS: I --

8 THE COURT: Or don't you know the answer, if  
9 you don't know the answer it's very important that you  
10 tell me you don't know rather than guess?

11 MS. WEISS: Oh, I'm not guessing, Your Honor,  
12 I don't know, but I can speak to the attorney who was  
13 in charge of those cases who is still with the Law  
14 Department. He's the one who was able to point me to  
15 the deposition transcripts which were requested and  
16 produced.

17 THE COURT: Well why hasn't that happened?  
18 (indiscernible) know the answer to that right now --

19 MS. WEISS: I'm don't, I'm sorry.  
20 Respectfully, Your Honor, I did not know that I was  
21 going to be asked how exhibits are archived, I  
22 apologize.

23 THE COURT: Well it's raised in your letter.  
24 All right, Mx. Green, did I interrupt you?

1  
2           MX. GREEN: Your Honor, the only thing I was  
3 really aiming to add, well, two things. First, I  
4 think where Ms. Weiss ended before you two started  
5 talking, I think it's very important to note we still  
6 don't have documents, and we still don't have an  
7 explanation or an affidavit like you ordered, and I  
8 think that's partly what's driving the problem.  
9 Although the other thing that I would add is my  
10 understanding of whenever, you know, the City doesn't  
11 get to just archive or destroy things, they actually  
12 have to ask permission from the Corporation Counsel.  
13 And there are, I think there are affidavits that are  
14 created whenever anything goes to an archive. And, you  
15 know, certainly we're not going to ask them to try to  
16 reconstruct documents that were destroyed in a flood  
17 or a hurricane, but I, you know, it is just as  
18 incredible to me that we don't know the basic answers.

19           You know, I'll segue to sanctions, we'll segue  
20 to sanctions at some point but I think at some point,  
21 you know, the fact that we don't have answers, it  
22 might be a deterrent sanction to make them, you know,  
23 collect this no matter the burden.

24           THE COURT: I, there's an utter lack of  
25 information here about burden and I, I mean I, I'm

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ready to, I guess maybe one thing to do would be to get the NYPD people to meet with you, Mx. Green, like Monday and so you can talk to them about where these documents might be, would that help and we can get back on the phone, I could try to find a time next week for us to continue this?

MX. GREEN: I mean I suppose --

THE COURT: I don't want, I don't want them to do, I mean I'm not prepared to say they've waived the burdensomeness objection because I mean I do have a goal in trying to move this along. And on the prior protests, you know, we're not going to, I don't want a litigation, I don't want, you know, to require them to produce on the RNC or Occupy Wall Street, you know, the set of documents that would have been or were produced as part of, you know, a case that was brought about those two things. This is a much more limited production having to do with their, you know, operations, conduct, something, I mean it's just something much more limited and I think there has to be a way to figure out how to do this without burdensomeness.

MX. GREEN: I agree, Your Honor --

THE COURT: Let me just tell you on 2002, it's

1  
2 a long time ago, I don't, you know, the relevance  
3 becomes, I disagree on your, your view, Mx. Green,  
4 that it's necessarily relevant. Certainly, I have no  
5 problem you're asking about anything you want in  
6 deposition, the question is how much burden I'm going  
7 to put on the City to produce documents from it. I,  
8 when I made my ruling I was persuaded, perhaps I  
9 shouldn't have been, that there was going to be a  
10 burden, a significant burden in producing 2002  
11 documents, I just don't know that we've gotten to the  
12 bottom, the bottom of this and I'm trying to figure  
13 out a good way to do it, do you have any thoughts, Mx.  
14 Green?

15           MX. GREEN: Well, you know, I suppose a  
16 meeting would be useful. I'm not sure if the people  
17 we've been talking to at NYPD know this stuff, if  
18 there's an archivist maybe that's the right person to  
19 talk to. You know, knowing only what I do about the  
20 NYPD through litigation, I don't know who the relevant  
21 --

22           THE COURT: Ms. Weiss, who are you talking,  
23 who's responsible for this at the NYPD, who is  
24 responsible for looking for this?

25           MS. WEISS: My liaison is the managing counsel

1  
2 of the Civil Litigation Unit and her, one of her main  
3 roles is knowing where to find documents and give it  
4 to the Law Department for litigation. We also have an  
5 attorney liaison from the Police Action Litigation,  
6 I'm not sure of what the acronym is but he's an  
7 experienced litigation attorney at the police  
8 department and he also plays a role in helping us  
9 obtain necessary documents. So between the two of  
10 them, I have no doubt that they will know who to speak  
11 to, to find out more information about these  
12 documents.

13           MX. GREEN: Your Honor, if I may, they'll know  
14 who to speak to, not they're the people to speak to.  
15 And I do think this plugs into something I want to  
16 talk about a little later which is, you know, the meet  
17 and confers on the first consolidated requests where  
18 the Court ordered defendants to be ready to find confirmed  
19 dates on a list of documents that we sent them in  
20 September last year. And the best we were able to do  
21 talking to this liaison was getting dates, getting  
22 commitments to give us dates to give us dates 20 days  
23 from Wednesday. So, you know, clearly that person  
24 doesn't know where documents are with firsthand  
25 knowledge, she knows who to talk to, and that's

1  
2 clearly not enough.

3 THE COURT: And I mean the nature of the  
4 documents we're talking about, I mean that's also a  
5 little bit unclear to me and maybe this is partly an  
6 issue for you, Mx. Green, which is what is it that you  
7 are looking for? Because, as I said, you can't do a  
8 re-litigation of RNC or anything else.

9 MX. GREEN: Of course. I think our discovery  
10 requests spell it out in some detail, but it's stuff  
11 like after action reports, UF-49s, some arrest  
12 reports, action plans, after action reviews. I think  
13 we may have asked for some disciplinary material,  
14 although my understanding is that that's going to be a  
15 very thin stack of paper if it exists at all. It's  
16 that kind of stuff, it's spelled out in more detail in  
17 the requests but it is targeted in that we named by  
18 name the kind of documents we want.

19 THE COURT: So you don't think there is any  
20 utility in having someone from (indiscernible) talking  
21 to anyone at NYPD, and I can have them bring the  
22 people who are responsible for --

23 MX. GREEN: If it's the right person --

24 THE COURT: (continuing) -- that has some  
25 knowledge of where the documents are.



1  
2           MX. GREEN: If it's the right person I think  
3 it would be hugely useful, the problem is that we've  
4 never been in the room with the right person except on  
5 the, on the body worn camera issue. The people that  
6 have been coming to our meet and confers need to go  
7 talk to other people and don't have any personal  
8 knowledge of what searches have been done. And, in  
9 fact, you know, they'll put a footnote on that because  
10 the general answer is that they haven't started  
11 searches at all.

12           MS. WEISS: Respectfully, I disagree with a  
13 lot of what Mx. Green --

14           THE COURT: Have they started searches, Ms.  
15 Weiss?

16           MS. WEISS: Yes. Yes, Your Honor.

17           THE COURT: Okay, who, is it this managing  
18 attorney who personally looks or they delegate  
19 someone?

20           MS. WEISS: No, she does not personally look,  
21 there is, there's dozens and dozens and dozens of  
22 different places where, where documents can be. And  
23 she does not personally look. She either reaches out  
24 to the different places where documents could be to  
25 have searches done or she has, if it's something

1  
2 simple she delegates to one of her staff. But she does  
3 not personally do searches. Different searches,  
4 different types of searches for different types of  
5 material are done in different places by different  
6 people. It's just not practical to have all these  
7 different people on meet and confer which is why all  
8 the information is consolidated through this managing  
9 attorney.

10 THE COURT: Well we have limited categories of  
11 documents so I'm ordering that the people who know  
12 where those documents are appear in a conference call  
13 with or without the managing attorney and do it by  
14 Monday or Tuesday so that we can finally figure this  
15 out and I can understand what the burdensomeness issue  
16 is. I'm leaving 2000 -- I'm leaving the World  
17 Economic Forum in the mix for right now, I'm not going  
18 to make a final ruling on it without hearing what it  
19 would take for you to get documents from them, but we  
20 need a meeting with the actual people who know where  
21 this stuff is, I don't believe it's dozens and dozens.  
22 I believe that given the listing that Mx. Green has  
23 described, that's going to be circumscribed.

24 MX. GREEN: Your Honor, can we order -- I'm  
25 sorry, I did not mean to interrupt.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Go ahead.

MX. GREEN: Can we order a meet and confer time just because of the difficultly we've been having in getting these scheduled --

THE COURT: Sure. Let's say Tuesday.

MX. GREEN: Can we do Monday at one o'clock?

THE COURT: Well I want them to be able to get people to work on this.

MX. GREEN: Understood.

THE COURT: I'd rather do Tuesday or Wednesday.

MX. GREEN: Okay, then for me a Wednesday afternoon would be ideal.

THE COURT: Okay, Wednesday, 2 p.m.

MS. WEISS: Your Honor, respectfully, if the person who is in charge of this is not available Wednesday at two, I don't want to be in violation of the Court --

THE COURT: Then you'll write me a letter telling me what the problem is after talking to Mx. Green first.

MS. WEISS: Yes, Your Honor.

THE COURT: And, by the way, that's advice for the future, if I order something and you feel you

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

can't do it, you can't just blow it off, you have to do something about it, do you understand that, Ms. Weiss?

MS. WEISS: Yes, Your Honor.

THE COURT: Okay, so my problem is I'm a little booked up in the following days but I, probably Friday afternoon I have time for us to reprise this next Friday. Okay, why don't we reserve the p.m. on the 18<sup>th</sup> in case, 2:30 p.m. on the 18<sup>th</sup> in case we need it. I'm not putting this down as a conference yet but we'll see what, see what report I get.

MX. GREEN: Understood.

THE COURT: If you come to an agreement on this it would be great. And, you know, Ms. Weiss, you have responsibility in the meantime, it's not just NYPD, you've got to get your ducks in a row completely about what the Law Department can get its hands on, what it would take to get something from archives --

MS. WEISS: Yes, Your Honor.

THE COURT: You know, whether, how they're identified and what the big deal is, you can't just have guesses about based upon some experience you once had in the past.

MS. WEISS: Understood.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: All right, we have some other pieces of this, Mx. Green, do we have any other pieces on this, I feel like there was some other order that was violated --

MX. GREEN: Yes, Your Honor. So I mean we haven't talked about the sanctions issue on this issue and --

THE COURT: Okay, so let's finish out the merits, maybe we have finished out the merits, before we get to sanctions, and we're putting off the merits, I guess.

MX. GREEN: Yeah, the only thing I will add on the merits is I'm not entirely sure we have a full set of depositions so I'd like that to be, you know, we, Ms. Weiss and I can meet about that, but I, I do not think that they were, that we've gotten is particularly comprehensive. I think it's, anyway, I will address that separately if that's okay with everybody.

THE COURT: Okay. So we're on sanctions then?

MX. GREEN: I believe so. So I think, if I may, I'd like to start with, you know, a particular set of sentences in the letter opposing it where defendants wrote in ECF --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Before you get to the opposition, just since I have a bunch of issues here, just remind me specifically --

MX. GREEN: Understood.

THE COURT: Is this the one where I required an affidavit?

MX. GREEN: It is.

THE COURT: Okay.

MX. GREEN: An affidavit or production and we still are, have no affidavit as of today and the production is still incomplete as of today.

THE COURT: Okay, just give me the docket number of my order.

MX. GREEN: Absolutely, give me one second unless somebody has it and can pass it to me. I believe this is 383.

THE COURT: Hold on. No, I think the order is 359.

MX. GREEN: Oh, I'm sorry, I thought you meant the, yes, that, yes, correct.

THE COURT: 359, okay, so let me just look at it. I need to pull it up here. Okay, go ahead.

MX. GREEN: Okay, so I think given where the Court wanted to start, where I'd like to start then is just

1  
2 briefly with the history of what's happened here. These are  
3 documents that I think, you know, our view is that we  
4 should have gotten them on July 31<sup>st</sup>. They are clearly  
5 part of the first set of consolidated requests,  
6 although defendants did object ultimately I think the  
7 Court ultimately rejected the argument on which they  
8 were objecting in a decision that it issued on the  
9 motion to dismiss before July 31<sup>st</sup>.

10           The way we've gotten to where we are now is we  
11 then sent an email, defendants asked for a couple of  
12 weeks to think about it, they thought about it and  
13 that just kept getting kicked down the road with  
14 progressive commitments to get us documents and  
15 revised objections, you know, every few weeks. And  
16 so, you know, theoretically, at least, I would have  
17 hoped that somebody was looking for the documents in  
18 that time.

19           Ultimately, skipping forward a bunch,  
20 defendants made a firm commitment, and if I'm remembering  
21 this issue correctly, this is one where they even said, yes,  
22 there will be consequences, we agree you'll be able to call  
23 witnesses back if we don't make a deadline of December 17<sup>th</sup>.  
24 What happened, and this connects some of the staffing stuff  
25 we were talking about earlier, is that Ms. Weiss had planned

1  
2 a vacation and, of course, attorneys should be allowed to go  
3 on vacation, there is nothing wrong with that, that lasted  
4 for about two and a half weeks starting on December 20<sup>th</sup>.

5 And so this was not the only commitment that defendant sets  
6 for December 17<sup>th</sup> and 18<sup>th</sup>, there were five or six big issues  
7 that they promised productions on and they didn't produce  
8 anything.

9           And so what happened is we then started trying to  
10 follow up and the answer we got from the rest of defendants'  
11 litigation team was that they were not able to respond to  
12 anything while Ms. Weiss was out of the office and that  
13 every decision needs to be signed off on by Ms. Weiss. And,  
14 you know, I think for this issue, in particular, that was  
15 striking because at every meet and confer we had, Ms. Weiss  
16 told me that this was not her issue, that she was not  
17 dealing with it, that somebody else on her team was dealing  
18 with it and would be getting the answers soon and until the  
19 commitment of December 17<sup>th</sup>.

20           Ultimately then, you know, we held off on making a  
21 motion although we sent them a motion I think on December  
22 20<sup>th</sup> or 21<sup>st</sup> under ECF 317 that said, you know, we want to  
23 compel these documents, it's, you know, dis-serving that  
24 you're blowing our, you know, the things you've committed in  
25 writing to us to do. Ultimately, we decided to hold off and



1 let Ms. Weiss have an opportunity to address it when she  
2 got back to the office and what we got was nothing when  
3 she got back to the office, she just didn't respond to the  
4 emails. And so we filed the letter and the first time  
5 around defendants filed an opposition that the Court said  
6 did not actually do any of the things it was supposed to do.  
7 And so they filed another opposition and, you know, what it  
8 seems like from what they've said about at this stage their  
9 failure to produce is that they started collecting these  
10 documents for the first time after the Court ordered  
11 them, not even after the Court ordered them to, to  
12 file a second opposition letter but they didn't start  
13 collecting them until the Court literally ordered them  
14 to collect the documents. And so, you know, on  
15 sanctions Ms. Weiss' letter focuses on how it wasn't  
16 unreasonable for them to miss a deadline when the  
17 Court ordered it on January 24<sup>th</sup> for January 28<sup>th</sup>. And  
18 maybe in isolation that's true, but that ignores the  
19 entire history of this. It ignores that they've been  
20 promising these documents for more than, you know, six  
21 months.  
22

23           And the other thing I will say about the  
24 letter that defendants have filed, there's a line in it  
25 that says --

THE COURT: You're talking about docket 381?

MX. GREEN: 381 that says, "Defendants do not take the orders of this or any other Court lightly." As Your Honor knows, this case is on a rocket docket with ten consolidated cases, several of them purported class actions, dozens of attorneys, with seemingly unlimited time and resources for bullying and attempting to intimidate defendants and their counsel. Of course, as the Court probably remembers, just before that at ECF 347, the Court had written there are many problems with the City's response and I'm just kind of putting ellipses in here. The City's letter improperly accuses plaintiffs' counsel of acting unprofessionally without providing a basis for that accusation. Such accusations shall not be repeated in the future. It didn't even, their claim to be taking the Court's orders seriously didn't even last a single sentence.

This is not the only order that we're running into problems on. As the other letter I filed last week as a status report, and that's, if you give me a second, sorry --

THE COURT: 380?

MX. GREEN: I believe that's right, yes, 380, despite a clear Court order saying that they needed to be ready to provide firm dates on documents they've known we don't have since September, and really they've known

1 we weren't going to get since March, defendants were not  
2 prepared to provide firm dates. We objected to it at the  
3 first meet and confer that they cut off after about an hour  
4 last week, and this week they were no more prepared to  
5 provide us firm dates on any, you know, I -- I may have, if  
6 I suggested they haven't started looking for anything, I  
7 overstated it earlier, but it's very clear that for a large  
8 number, if not a majority of the categories identified in  
9 the September letter, defendants are considering how to  
10 collect the documents for the first time in our meet  
11 and confers. And then they need to go talk to the  
12 people who organized those documents to find out how  
13 long it's going to take to collect. When the Court has  
14 already ordered them to provide firm deadlines, that's  
15 just not okay. It's, it's extraordinarily frustrating  
16 and it's obviously on the schedule grinding things to  
17 a halt.

18  
19 In terms of what we should do at this point,  
20 to my mind there are three basic kinds of sanctions.  
21 There are sanctions that are individual that are  
22 intended to provide some kind of deterrent effects,  
23 for example, fining an individual attorney \$500 in a  
24 written decision --

25 THE COURT: Before, wait, wait, before we get

1  
2 to the types of sanctions I need, I need greater  
3 specificity on what you're talking about in terms of  
4 what specific conduct is being sanctioned and what  
5 letter is raising this. You're talking about sanctions  
6 based on 380?

7           MX. GREEN: So I think that there are  
8 appropriate sanctions based on 380 --

9           THE COURT: This is not, we're not going to do  
10 sanctions based on 380, that's not, that was not keyed  
11 up for this, I'm happy to talk about --

12           MX. GREEN: Understood. And I, I don't mean to  
13 be suggesting that we're asking for it directly, I  
14 think that I'm mentioning it because this is, at this  
15 point, to say that this is not an intentional course  
16 of conduct, it strains reality. I think that more  
17 orders have been violated than have not. Just this  
18 week, you know, after the Court's comments at the lack  
19 of deposition, about the 48 hour rule, it was not  
20 until Thursday at 4:00 for a, I'm sorry, Tuesday at  
21 4:00 for a Thursday deposition that we got, we got the  
22 documents that the Court had ordered for every  
23 deponent. It's, there is a total lack of respect for  
24 the Court's orders.

25           Now I think it is teed up with regard to the

1 prior protest motion, right, that it is that course of  
2 conduct, that violation of a clear order to produce or  
3 provide an explanation by way of affidavit with  
4 somebody with personal knowledge as to why collection  
5 was impossible, neither of which has been done even as  
6 of today. That's what we're seeking sanctions on. But  
7 I think the reason I am talking about the rest of it  
8 is I think that bears very much on the severity of the  
9 sanction that's warranted and kind of, I know we'll  
10 talk in a moment about the kinds of sanctions, but the  
11 point is the kind of sanction that will actually get  
12 this case back on track.

14 THE COURT: Okay, so --

15 MX. GREEN: And I thought I should mention it  
16 was because of our, the lack of documents on this that  
17 we had to cancel the deposition that was scheduled for  
18 Tuesday.

19 THE COURT: Because of lack of prior protest  
20 documents?

21 MX. GREEN: Yes, correct.

22 THE COURT: Yes, okay. So, all right, so now  
23 I know we're talking about 359, go ahead about the  
24 types of sanctions.

25 MX. GREEN: Okay. So to my mind there are

1  
2 basically three ways we can look at sanctions. There  
3 is, you know, the individual, I mean it's more than a  
4 slap on the wrist but a targeted, you know, Dara Weiss  
5 shall pay plaintiff \$500. I don't know that that's  
6 going to get us much of anywhere in this case. You  
7 know, certainly it's, I don't even think that most of  
8 this is Dara Weiss' fault, I think most of it's the  
9 client's fault, so I don't know that I think that  
10 would be appropriate.

11           Past there, there are two ways I see of  
12 looking at sanctions. First is kind of backward  
13 looking make whole sanctions. So those are things like  
14 ordering attorneys' fees, or perhaps even, you know,  
15 an order of preclusion when, you know, documents have  
16 been destroyed and there is no way to replace them.  
17 and them. And then there are forward looking  
18 sanctions, and this would be category three, that aim  
19 at fixing the problem going home, whether through  
20 deterrents or, you know, I know it wasn't phrased as a  
21 sanction, but things like you see at 317 that provide  
22 procedures that try to stop the problems from popping  
23 back up again.

24           You know, I thought a lot about what would  
25 work in this case. I think attorneys' fees, as we

1 understand it, are mandatory, so we'd ask for those.  
2 But in terms of fixing the problem going forward,  
3 here's what I think makes sense. In order to stop us  
4 from ending up here and expending more unnecessary  
5 motion practice when the City misses Court ordered and  
6 agreed upon deadlines, we'd ask the Court to do  
7 something like this.

8  
9 First, if the City anticipates missing a  
10 deadline, Court ordered or one agreed by from the  
11 parties, they must submit an affidavit from the  
12 appropriate custodian, so either NYPD or Mayor's  
13 Office, at least two days before the deadline  
14 explaining in detail why the deadline is impossible to  
15 meet so the Court can decide whether an extension is  
16 appropriate and actually have a chance to tell them  
17 that the extension is inappropriate if it believes it  
18 is. The Court can then also schedule a conference  
19 requiring the person from the NYPD or Mayor's Office  
20 to come to see if an extension is warranted if the  
21 information in the affidavit is threadbare or not  
22 sufficient.

23 Second, we think that at this point it makes  
24 sense to have the Court so order any and all of the  
25 parties' agreements about defendants' deadlines to

1 produce that we agree on at meet and confers or an email  
2 that we exchange in lieu of meet and confers. In terms of  
3 process, what I'd propose is that plaintiffs send an email  
4 to defendants summing up any commitments that we believe  
5 they've made and proposing language to be so ordered, and if  
6 they don't object that (indiscernible) we can send it to the  
7 Court can be so ordered. If they do object, then they can do  
8 so by identifying what they disagree with, and for the  
9 issues that aren't in dispute, then we can submit those to  
10 the Court to be so ordered, for everything that is in  
11 dispute, as with ECF 317 we'll make ourselves available  
12 within 24 hours to discuss and otherwise defendant should  
13 propose alternate language that they believe reflects the  
14 agreements and we can go from there.

16 Third, if the City misses a deadline without  
17 submitting an affidavit two days in advance, they must  
18 submit a letter within one day of missing the deadline  
19 explaining why they shouldn't be sanctioned for further  
20 failures to comply with the Court's orders.

21 And then, finally, if defendants fail to submit a  
22 letter, we think it would be appropriate for the Court to  
23 set a presumed scale for progressive monetary sanctions for  
24 each deadline missed. We're really hoping that won't be  
25 necessary, but we think that having the system in place so



1 that we're not coming to the Court and providing fair  
2 warning to defendants, and specifically to, you know, to  
3 counsel's clients that there will be consequences for  
4 failure to follow the Court's orders is necessary at this  
5 point to insure that we're not missing deadlines, both, you  
6 know, committed to formally in the Court's meet and confer  
7 process, and ordered by the Court.

8  
9 THE COURT: Okay, gather this is the first time  
10 Ms. Weiss is hearing this, Mx. Green?

11 MX. GREEN: That's correct, this is something  
12 that, you know, we've spent some hours in common interest  
13 meetings putting together, but yes.

14 THE COURT: Okay. All right, Ms. Weiss, I know  
15 you're blindsided a little by this but I'll hear from you.

16 MS. WEISS: Yeah, you could say that. First of  
17 all, I appreciate, Mx. Green, that you don't think sanctions  
18 against me personally are appropriate here. But, you know,  
19 Your Honor pointed out this is, this is new, and these  
20 sort of sanctions. Mx. Green's letter talked about  
21 attorneys' fees under Rule 37 and that was, frankly,  
22 all we were prepared to discuss. You know, and, Your  
23 Honor, this goes back to the argue with respect to  
24 audit trails and our opposition to that. Despite Mx.  
25 Green's contentions, none of this is purposeful or an

1  
2 intentional disregarding of the Court's order. That's  
3 just not something that is at issue in this case at  
4 all.

5           And I also appreciate that Mx. Green said that  
6 I, attorneys can go on vacation. I don't know  
7 everything that happened while I was on vacation, I  
8 know what happened when I came back. If there were any  
9 orders that were, were missed, I sincerely apologize.  
10 We're working now on getting the documents, we're,  
11 it's going to be the discussion on Monday to make sure  
12 that we get documents as quickly as possible. I'm not  
13 sure that deposition had to be postponed because of  
14 lack of these documents but, you know, plaintiffs  
15 wanted to do that and that was fine with defendants,  
16 it's understandable. There's a very tight amount of  
17 time to do depositions, we're trying to fit in fifty-  
18 some-odd in that time but I'm sure we'll be able to  
19 reschedule it.

20           But, once again, this was in no way  
21 intentional, it was just so many things coming in at  
22 once and trying to keep up with it. And I made this  
23 argument earlier in this conference and we rest on  
24 that.

25           THE COURT: Here's the part I don't

1  
2 understand, Ms. Weiss, I issue a Court order requiring  
3 you to provide an affidavit and you literally just act  
4 as if it doesn't exist. I mean we have a lot remedies,  
5 you can move for reconsideration, you can object, but  
6 why is violating it an option?

7 MS. WEISS: Well, Your Honor, it was not  
8 intentionally violated. I was busy trying to get the  
9 documents and the date, the date just passed and I  
10 apologize that we didn't get the affidavit. It was, it  
11 was a complete oversight. We --

12 THE COURT: Did you read -- I don't issue that  
13 many orders, did you read the January 24<sup>th</sup> order?

14 MS. WEISS: Yes, I did, Your Honor.

15 THE COURT: Were you aware that you either had  
16 to produce or provide this affidavit, did you  
17 understand that from the order?

18 MS. WEISS: Yes, Your Honor, and I was working  
19 on --

20 THE COURT: And at the time you read it did  
21 you think, did you think I'm not going to have to do  
22 that affidavit because I know we're all going to get  
23 it done or did you think, you know, we're not going to  
24 get this done by the 28<sup>th</sup>, I'm going to have to do an  
25 affidavit? Did you think either of those things?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. WEISS: I don't remember exactly what I thought when I got the order, but I, I proceeded as if I was attempting to get the documents.

THE COURT: You thought you would have it all produced by the 28<sup>th</sup>?

MS. WEISS: I didn't know, I was looking through documents to see what I could produce and then the date simply passed.

MX. GREEN: Your Honor, that's also just not true. In an email the day it was due, defendants wrote saying we intend to produce prior protest documents on a rolling basis. The idea that this passed without notice is, I mean it's not believable on a Court order in the first place. But in writing defendants said that they intended to produce prior protest documents on a rolling basis, I emailed them back saying that's not consistent with the Court's order and didn't get a response.

THE COURT: What date did you email them?

MX. GREEN: They emailed me on the 28<sup>th</sup> and I emailed them back on the 28<sup>th</sup>. It's quoted in my letter and I'm happy to file --

THE COURT: You it that to Ms. Weiss?

MS. WEISS: Yes, Ms. Weiss and Ms. Robinson.

THE COURT: Well, Ms. Weiss, you got an email

1  
2 saying that you had to produce this affidavit on the  
3 28<sup>th</sup>, right, reminding you?

4 MS. WEISS: It's possible, I don't have my  
5 emails from the 28<sup>th</sup> open here and I don't specifically  
6 remember.

7 THE COURT: I mean this, we can't function if  
8 you don't read and comply with Court orders, that's so  
9 basic. I mean I'm just flabbergasted that I don't know  
10 what you expect is going to happen if you don't comply  
11 with a Court order or try to do something about if you  
12 think you can't comply with it. I mean this one,  
13 obviously, could have been complied with. I just, I, I  
14 don't think I ever had a litigant quite so contentious  
15 (indiscernible).

16 All right, I think I would like, Mx. Green, for  
17 you to put this proposal you gave to me on future  
18 sanctions in a letter and then I will -- file it as soon  
19 as you can, Ms. Weiss, you can respond within two days,  
20 and then I'll decide what I think is the best way going  
21 forward as to those.

22 As to a Rule 37 sanction for violating my  
23 extremely clear order of January 24<sup>th</sup> at docket number  
24 359, the City is sanctioned by awarding the attorneys'  
25 fees that Mx. Green had to go through to bring this to my

1  
2 attention afterwards. So we're going to use the same  
3 procedure that we used in the other case. Mx. Green, you  
4 put together, you know, whatever your proposal is for the  
5 fees, show it to Ms. Weiss, if you want to work it out on  
6 your own, that's fine, otherwise you'll just send it to  
7 me.

8           MX. GREEN: Yes, Your Honor. If I may clarify  
9 what's the starting date on, just so we don't end up  
10 in dispute about what's fair game for this --

11           THE COURT: After January 24<sup>th</sup>.

12           MX. GREEN: After the 24<sup>th</sup>, okay.

13           THE COURT: No, no, no, I take it back, it has  
14 to be after the 28<sup>th</sup>, it has to be after the failure to  
15 file the affidavit, it's post January 28<sup>th</sup>.

16           MX. GREEN: Understood.

17           THE COURT: And also relevant to this  
18 particular issue.

19           MX. GREEN: No, of course, I suppose the only  
20 thing I --

21           THE COURT: We're talking about basically the  
22 369 but, you know, if there's some other work you did  
23 on it, that's fine.

24           MX. GREEN: Well, Your Honor, I suppose what,  
25 I understand the, I think that's 37(a) for violating

1  
2 the Court order, we'd also ask for 37(b) and I may  
3 have mixed them up, sanctions related to, you know,  
4 having to just follow-up for nearly a year on this  
5 stuff and --

6 THE COURT: Yes, I understand, on the merits  
7 of that I'm putting that off for now.

8 MX. GREEN: Understood, that's all I want to  
9 clarify.

10 THE COURT: Okay.

11 MX. GREEN: I'm not going to argue and I just  
12 wanted to know what I'm supposed to send them.

13 THE COURT: I'm glad you asked. Okay, what's  
14 left, Mx. Green?

15 MX. GREEN: I suppose I think the right way to  
16 handle what's been going on on the, kind of the bigger  
17 picture stuff, I mean, you know, I understand that  
18 perhaps I have blindsided Ms. Weiss with the specific  
19 proposal but I think that we had asked to be, everyone  
20 to be ready to talk today about the bigger picture  
21 issue that it's not just Court orders that are getting  
22 disregarded but, you know, defendants are not keeping  
23 their commitments in the meet and confers, they're not  
24 scheduling meet and confers, that just getting basic  
25 information is pulling teeth here.

1  
2 I think the proposed sanction handles that in  
3 part. I suppose what I would ask in addition to that is just  
4 if we could submit all of the commitments defendants have  
5 made in the most recent meet and confers to be so ordered,  
6 that might also help us move forward. Otherwise I think the  
7 proposed prophylactic sanction is, covers that part of our  
8 request.

9 THE COURT: I think it's a good idea to have Court  
10 ordered deadlines where possible so I'll agree with you on  
11 that. I guess there's a listing, and I can't remember what  
12 docket number it is, of categories that the City, that  
13 you're in discussions with the City on --

14 MX. GREEN: Correct.

15 THE COURT: Is it that they have made  
16 commitments on some and you want them so ordered?

17 MX. GREEN: So what we would have to do here  
18 because they did not come to that meet and confer  
19 prepared to discuss firm dates, is they have  
20 committed, that's 20 days from this Wednesday, they  
21 will give us what we referred to as a date for a date.  
22 Meaning, or, sorry, the 20 days from Wednesday was a  
23 date for a date, meaning on that day we will get a  
24 firm commitment. And, you know, I think in our view  
25 the discovery schedule is kind of blown already at



1  
2 this point, we're discussing separately requesting an  
3 extension and, you know, rescheduling depositions as  
4 is appropriate. But I think whatever comes out of  
5 their mouth on the 20<sup>th</sup> we want that to be so ordered  
6 and we want the fact that it has to come out of their  
7 mouth, not the 20<sup>th</sup>, in 20 days, and the fact that it  
8 has to come out of their mouth in 20 days also to be  
9 so ordered.

10 THE COURT: That's fine. I'm a little  
11 concerned about this notion that there's some  
12 automatic extension of a discovery schedule that's  
13 going to happen, is this going to affect other dates?

14 MX. GREEN: Your Honor, I believe it is, I  
15 just, you know, we've been talking to the City about  
16 it. I think the only other option is, you know, given  
17 the prejudice we've had to be talking about preclusive  
18 sanctions instead of prophylactic sanctions. I  
19 understand --

20 THE COURT: Proving what exactly?

21 MX. GREEN: I mean the reason we didn't ask  
22 for it specifically is because I can't think of  
23 anything that wouldn't basically amount to striking  
24 the City's answer. And I, you know, please do tell me  
25 if I'm wrong but I assume you're not there.

1  
2 THE COURT: Well, no, I mean we have to, I  
3 mean you're not stopping all depositions, I assume. I  
4 assume there are some, I mean I can see how for high  
5 level people there may need to be a moving to the end  
6 but you're not talking about halting depositions, are  
7 you?

8 MX. GREEN: We're not talking about halting  
9 them, but because of the way we did things if, the  
10 reason that we didn't finish discovery at the end of  
11 last year is that the City, despite the Court's order  
12 on when to produce documents and, you know, despite  
13 the Court's order on when discovery ended had, without  
14 telling anybody, decided they were going to produce  
15 emails at either the end of December or beginning of  
16 January, which was past the discovery end date. And  
17 we only found that out because we moved to compel  
18 those. And so, you know, what was left at that point  
19 in terms of depositions was high level. There are  
20 line level officers that we've discovered exist from  
21 various discovery, from emails, from so on, and we had  
22 noticed some of those, but really all that's left were  
23 the depositions that in the first instance we decided  
24 we were unable to take without significant document  
25 production. And, of course, all of those decisions

1  
2 were made on the assumption that we were going to get  
3 everything on July 31<sup>st</sup> which didn't happen. And, you  
4 know, even though the Court ordered -- sorry, please.

5 THE COURT: Well I'm trying to follow where we  
6 are now. So some depositions are going to be  
7 happening because they can go forward without this  
8 production, there are others you want to wait on the  
9 production for, is that it?

10 MX. GREEN: That's correct.

11 THE COURT: Okay. How many others are waiting  
12 on the production?

13 MX. GREEN: I could not tell you offhand  
14 where, I am happy to discuss with the common interest  
15 group and put together a list of each category but I  
16 am not prepared to say that right now.

17 THE COURT: I mean, again, the parties just  
18 can't assume that if they agree to it that deadlines  
19 are going to be extended, the Court has an interest,  
20 too. So, you know, I'm not saying that some brief  
21 extension isn't possible but we have to do what we can  
22 to, you know, limit it.

23 MX. GREEN: I understand, Your Honor. I think  
24 what I would like to just say on that, almost every  
25 one of these motions that we're here on today were

1  
2 filed, you know, about commitments the defendants missed  
3 in mid-December at the beginning of January. And I  
4 understand why it's taken so long to get here on a  
5 conference, I do, but, you know, what we had asked for in  
6 each of these letters was production in time to keep the  
7 schedule and we're just --

8 THE COURT: I don't want to talk about the past or  
9 blame, I want to talk about --

10 MX. GREEN: Yes.

11 THE COURT: Like one way to solve this is to say  
12 20 days is too long, we need the commitments sooner and, you  
13 know, if I think the commitment is so unreasonable then, you  
14 know, if they're going to extend discovery more than, you  
15 know, some brief period of time, then they are not going to  
16 be acceptable.

17 MX. GREEN: Understood, Judge. I think, you know,  
18 what we had been discussing between the parties was  
19 (indiscernible) extension. Another problem that we have is  
20 that despite, you know, really not trying to cast blame  
21 here, but not every deponent is even on the schedule yet and  
22 the Court had ordered that. And then defendants also, after  
23 I think last week shuffled all of their 30(b)(6) deposition  
24 designations and so, you know, that, that is also affecting  
25 things and the need for an extension.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I understand what the Court's saying, that, you know, we, we shouldn't assume that we're going to get an extension but given --

THE COURT: No, I understand the problem. I mean there's, you know, I mean if the City was actually able, I mean the City had shot itself in the foot because it's not, it's not been articulating burdens and it's possible that if they articulated, you know, particular burdens in producing things, I would say that's too much, I'd rather sacrifice the documents, have the case, you know, go forward on what I think is an appropriate schedule. That's, you know, an option, there's a tradeoff to be made potentially between producing documents and getting the case over with, and one might sacrifice some category of documents to say, you know, it's not worth waiting for these, better that the depositions go forward and the case go forward. Or that the documents only happen after the depositions and they can only be able to use, be used without having questioned deponents on them, that's probably the more likely option.

Do you see what I'm saying, Mx. Green, there's a balancing here.

MX. GREEN: I do, Your Honor.

THE COURT: The plaintiffs have an interest in moving the case along more than the City I would

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

think.

MX. GREEN: I think that's right. I think it ultimately comes down to prejudice though. You know, we have, we spent significant time at the beginning of last year mapping out a schedule that allowed us to take the depositions and get the discovery we wanted in a way that we thought allowed us to best prove our case. I think that there are very important documents and you're, of course, right that perfect productions are not something to hold up depositions for. But we are still missing just major, major crucial categories of documents, you know, and it's something that I think --

THE COURT: My point is those need to be prioritized. I mean I assume prior protests is one of those categories, right?

MX. GREEN: Absolutely.

THE COURT: Yes. And I guess there's others I haven't heard about.

MX. GREEN: That's correct, Your Honor.

THE COURT: In terms of being presented.

MX. GREEN: Right, or they were listed in the September letter that became the October motion that became the January motion.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Okay, but not, the merits have not been presented to me.

MX. GREEN: Right, because presumably defendants were agreeing to produce them, they just haven't.

THE COURT: Right. Yes, I mean you need to be sensitive to the possibility that some categories need to be frontloaded so that depositions can happen, others can wait because, I mean if the City ever showed it they would be too burdensome to be produced before the deposition and the plaintiffs might just have to wait in order to have a schedule when the case moves forward. So I just want to throw that in the hopper as a thought that you need to consider.

MX. GREEN: Yes, Your Honor, and I, you know, I would respectfully suggest that we have considered it and we've considered it I think pretty thoroughly at a lot of different stages in this case --

THE COURT: Well, I mean I'm not saying --

MX. GREEN: We've taken fifty-some-odd depositions, there's a deposition going on right now.

THE COURT: I'm not saying you're slacking, what I'm saying is that for purposes of seeking an extension, as someone said earlier, perfect could be

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

the enemy of the good which is to say there are some categories of documents we can wait till after the depositions. Because, you know, we won't be able to make the case to Judge Gorenstein that the City should have to produce all of it in time to have this go on the schedule that I'm contemplated.

MX. GREEN: Understood. I think the best thing to do then is, you know, for the documents we care about we will, you know, I suppose propose that they be ordered produced sooner rather than later and that might involve renegotiating some of the commitments we've made and then otherwise we'll propose a new schedule and request an extension in the appropriate way.

THE COURT: All right. I mean I think we're not thinking about schedule extensions, I was thinking more in the nature of, you know, 30 days, 45 days, I think what you're talking about is a lot longer than I was ever contemplating or would be expected to approve of.

MX. GREEN: I mean, Your Honor, I guess all I would say is if we count the days from when we were supposed to get documents and when we moved on them, which would be mid-December, so December 15<sup>th</sup>, 16<sup>th</sup>,



1  
2 17<sup>th</sup> and, you know, what I think the Court has signaled  
3 is the shortest period it's willing to order which is  
4 15 days from now, we're talking about --

5 THE COURT: Wait, wait, wait, 15 days from  
6 now, I'm sorry, I lost you?

7 MX. GREEN: When we were discussing various  
8 productions earlier in this call the Court was  
9 ordering, was suggesting it was going to order, you  
10 know, two-week type deadlines, not five-day or three-  
11 day deadlines. And so, you know, if you had the 15  
12 days at the end of last year, the 15 days from now,  
13 and the time it's been since January 1<sup>st</sup>, that's 60  
14 days --

15 THE COURT: Okay, right, I'm not sure that's  
16 necessarily the way to think about it but, fine,  
17 understood, maybe you'll be able to make the case for  
18 60 days. I mean how many, how much, how many days of  
19 depositions are contemplated once you get these  
20 documents?

21 MX. GREEN: I think we have something like 40  
22 depositions outstanding, maybe less than that, at the  
23 high level.

24 THE COURT: And how long are you expecting it  
25 to take you to do 40 depositions?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MX. GREEN: Well I think the time schedule extends into May I want to say, so about three months total.

THE COURT: Right, well that's another place where efficiency, I mean other efficiencies could be achieved, right? I mean the current deadline is, in fact, April 22<sup>nd</sup>.

MX. GREEN: Then I apologize because I had gotten the deadlines wrong, obviously the schedule for the most part complies with that although defendants have scheduled, I think there are a couple of witnesses that defendants have given updates that are past the discovery deadlines more.

THE COURT: Right. I mean if there is any play in, you know, liability and deadlines, that's something to be considered. Okay, well, I think, are we done, Mx. Green?

MX. GREEN: I believe so. I think, you know, the only other thing I would say is if we end up not having crucial documents at depositions and we can't get time to get those, I think we, we would end up contemplating another motion that takes, you know, curative sanctions in the form of some kind of preclusion.

THE COURT: Preclusion of what?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MX. GREEN: I mean maybe precluding them from arguing probable cause on, you know, the arrests of people over 2020, in the course of something like that.

THE COURT: All right, well, we're, I mean preclusion is always an option depending upon what the City does. But nothing to be addressed right now.

MX. GREEN: Understood.

THE COURT: Ms. Weiss, anything you want to say in response to what you heard?

MS. WEISS: No, Your Honor, if and when these issues come up we'll certainly address them. I know that Mx. Green was just sort of throwing things out there now, but I don't think they need to be addressed at this moment by the City.

THE COURT: The date for the date is really bothering me. It's just too long. When, Ms. Green, what do you calculate this promise date to be?

MX. GREEN: It's 20 days from Wednesday and if you give me a moment I can look at a calendar and see what that actually means.

THE COURT: Twenty days from this past Wednesday?

MX. GREEN: Yes, so that's going to be the 1<sup>st</sup>

1 of March.

3 MS. WEISS: Your Honor, we had originally  
4 proposed it earlier but during the earlier week the  
5 NYPD liaison, the managing attorney of the unit, is  
6 going to be on vacation, so we extended it until she  
7 got back from vacation because she's really the one  
8 who needs to get and would have the information.

9 THE COURT: (indiscernible)?

10 MS. WEISS: It's the week after Presidents Day  
11 so I think that's the week of the 21<sup>st</sup>.

12 MX. GREEN: Right, defendants did not want to be  
13 responsible for something at all that week so we moved  
14 it to the next week.

15 THE COURT: I mean is any work being done on  
16 actually looking for the documents, I mean, or is this  
17 date to announce when you're going to be looking in  
18 the future, Ms. Weiss?

19 MS. WEISS: No, it's a, it's a date to give  
20 plaintiffs a firm date of when the documents will be  
21 produced. Our liaison is reaching out --

22 THE COURT: The work on searching for them has  
23 to happen immediately, is that happening or not?

24 MS. WEISS: It is, our liaison has already  
25 reached out to or is in the process, the meet and

1  
2 confer just happened on Wednesday, the process of  
3 reaching out to all the different units who would be  
4 in possession of these documents or these types of  
5 documents to have them looking and she will then let  
6 us and plaintiffs know when each of these units will  
7 have the documents all collected.

8           THE COURT: Right, and also they should be  
9 collecting it, too, I mean --

10           MS. WEISS: Well, yes --

11           THE COURT: That should be started.

12           MS. WEISS: Yes, that is the part of it, I  
13 can't guarantee that she has been able to reach and  
14 speak to all of the units as of now, you know, I don't  
15 know what people's days off are or people's  
16 availability --

17           THE COURT: Well make clear that the  
18 collection process has to start, it's not just an  
19 exercise to figure out when, how long it would take if  
20 it started on March 1<sup>st</sup>.

21           MS. WEISS: Yes, of course.

22           THE COURT: Start right now.

23           MS. WEISS: Absolutely.

24           THE COURT: And that they may be called in to  
25 say what they've done on particular searches.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. WEISS: Yes, Your Honor.

THE COURT: So maybe people -- okay, Mx. Green anything else?

MX. GREEN: Given all of that, perhaps the best thing to do is just set the deadline that everything needs to be produced or an affidavit needs to be produced by March 1<sup>st</sup>?

THE COURT: Well I, you mean actually produce the documents by March 1<sup>st</sup> or give --

MX. GREEN: Yes.

THE COURT: I mean they're being required to meet with you on March 1<sup>st</sup>, right?

MX. GREEN: They're being --

THE COURT: Or not?

MX. GREEN: The previous agreement which I think, you know, I think assumes perhaps wrongly that we would be able to get significant further time from the Court is, because defendants didn't come prepared as ordered to provide firm dates at a meet and confer and, you know, it's not the first time they were ordered, they were ordered to do that in October, as well --

THE COURT: I'm happy to order them to provide firm dates on March 1<sup>st</sup>, is that what you're asking or something else?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MX. GREEN: Well, no, I mean, you know, I think that's what we've agreed to do, I think the problem is if we're not going to be able to get the significant discovery extension that what we agreed to in that meet and confer doesn't work.

THE COURT: Well, I mean it depends what you mean by significant.

MX. GREEN: Sixty, ninety days.

THE COURT: It depends what these dates are. So I, let me think about this, I mean I, I'm flying blind here because I would have to go through the categories and understand what the issues are. Let me just think about this. I mean if the assumption is, right, that you're going to produce the documents on March 1<sup>st</sup> unless it's impossible to do so? Ms. Weiss is maybe on mute.

MS. WEISS: I'm sorry, I was on mute. The intention was not to produce the documents on March 1<sup>st</sup> unless, of course, we have them, but the intention was to be able to have full and thorough conversations with the folks who are searching for the documents to get a firm date by which they know they could get the documents to us and then we, in turn, can turn them over to plaintiff.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Mx. Green, the categories of documents are listed where right now?

MX. GREEN: They are in the September 10<sup>th</sup> letter that's attached to the first motion on this, give me a second and I'll give you a docket number. It's going to be one of the 354s, it's 354-2 --

THE COURT: Yes.

MX. GREEN: 342-2 provides the list and the list is provided between pages 5 and 8, and this was the motion that was made on, initially, or this is a letter that was filed on September 10<sup>th</sup> and then attached to a motion made in October. And then again attached to a motion made in January.

THE COURT: Yes, January, right.

MX. GREEN: And the January motion came because we weren't able to complete a process where the Court had ordered us to meet and confer and get firm dates for production.

THE COURT: I don't understand how the City gets a letter like this in September and doesn't know now what its position it in terms of the ability to produce them. Ms. Weiss, how does that happen?

MS. WEISS: Your Honor, we responded to the letter, plaintiffs were not satisfied with our



1  
2 response so we continued to engage in meet and confers  
3 to try to reach, to reach a conclusion that the  
4 parties would be satisfied with. This has been going  
5 on and we have been responding. There had been a  
6 series of meet and confers, the City provided  
7 materials and information to plaintiffs, we haven't  
8 heard anything for quite a while and then once they  
9 started contacting us, again, we started engaging in  
10 further meet and confers. And this week --

11 THE COURT: All right, this is what we're  
12 going to do on this. By, on March 1<sup>st</sup> you need to  
13 produce something, either produce these documents or  
14 give a letter to the other side that says when you're  
15 producing the, and if it's more than two weeks away  
16 you need to have a full explanation of what the  
17 problem is.

18 MS. WEISS: Okay.

19 THE COURT: If we do that, if you get  
20 everything, if you get everything, maybe, Mx. Green,  
21 where does that take us?

22 MX. GREEN: I think that that probably means  
23 that we'll, you know, assuming we actually do get  
24 everything and there isn't an objection that shows up  
25 for the first time, say, to privilege that we didn't

1 expect, that, I think that gives us some ability to,  
2 well, let's see, that would put us in March. I think  
3 maybe that means that with a 90 or 100, maybe 90 day  
4 extension of the discovery deadline we can keep things  
5 going, assuming that there are no scheduling issues.  
6 Like, for example, that the mayor is not, or the  
7 former mayor is not available for an entire month.

8 THE COURT: That's just too long.

9 MX. GREEN: I mean, Your Honor, I think, you  
10 know, one of the things that struck me in what Ms.  
11 Weiss just said, when explaining why they couldn't  
12 give us dates today it was, well, we just had this  
13 meet and confer on Wednesday. All we did at the meet  
14 and confer is go through this list, I said the name of  
15 the document request and read it and asked what the  
16 status was. And what we got on virtually every one is,  
17 okay, well those documents live here, I will go make a  
18 request. You know, it's very clear that defendants did  
19 not view this as something they needed to do until the  
20 Court specifically ordered it.

21 MS. WEISS: That's, that's not accurate at  
22 all.

23 THE COURT: Go ahead, Ms. Weiss. I mean for  
24 each of these categories have people been working on  
25

1  
2 getting them or not?

3 MS. WEISS: For some of the categories,  
4 absolutely but, Your Honor, a lot of them were either  
5 unclear or plaintiffs -- defendants objected to and  
6 then we withdrew objections, it's not as clear cut.  
7 And I don't have all my notes from that meet and  
8 confer with me so I can't tell you everything that  
9 happened, unfortunately, I didn't think that that was  
10 necessary to have with me today for today's  
11 conference. But I think Mx. Green is generalizing  
12 quite a bit.

13 THE COURT: All right, let's, let's leave it,  
14 let's -- give me a second. Whatever this order is,  
15 Mx. Green, I mean how is it phrased, I mean is it all  
16 of documents on this list to which objection has not  
17 been made and is that, does that make it clear?

18 MX. GREEN: I think that the answer is, you  
19 know, produce, shall produce all documents identified  
20 in document identifier or shall, you know, I mean, you  
21 know, end up with the basic thing that we should have  
22 gotten in the first document, the first set of  
23 objections which is state what's being withheld and  
24 why, if anything is being withheld. Obviously, we also  
25 need a privilege log on that day if there is anything

1  
2 being withheld and we need, but, you know, I think  
3 that these are all things and we picked these  
4 categories because they were not ones where defendants  
5 stated they were withholding documents.

6 MS. WEISS: Your Honor, I also just want to --

7 THE COURT: Some of these have been produced,  
8 right, I mean, or it's already been covered by things  
9 we've talked about.

10 MS. WEISS: Yes, Your Honor.

11 MX. GREEN: Some and in part. But, for  
12 example, let's take stop reports, that's document  
13 request 10, we talked for the first time on Wednesday  
14 about defendants gathering stop reports. There is no  
15 objection to producing stop reports, stop reports are  
16 something that's required, as I understand it, by a  
17 Court order in *Floyd* which is a stop and frisk case,  
18 and, you know, we just don't know when they are going  
19 to get them to us. And, you know, that item has been  
20 on this list since September 10<sup>th</sup> and it took until the  
21 beginning of February to even have them start  
22 searching for them.

23 MS. WEISS: Your Honor, if I may just point  
24 out that the September 10<sup>th</sup> letter, if I'm not  
25 mistaken, referred to one, one of plaintiffs',

1  
2 consolidated plaintiffs' discovery requests. The meet  
3 and confer that we had this past week extended to  
4 their second or supplemental request which had 101  
5 requests, it was not part of the motion. We discussed  
6 it anyway because we understand that there are items  
7 in there that might not have yet been located. So not  
8 everything here was at any point the subject of a  
9 motion. Not to say that we're not --

10           MX. GREEN: Your Honor, that's not true, we  
11 moved on the second consolidated request, too, because  
12 they didn't, they didn't give us requests that  
13 complied with the 2015 amendment. And the Court  
14 ordered us to meet and confer on those immediately at  
15 the beginning of January, it has been the subject of a  
16 motion.

17           MS. WEISS: Okay, I apologize, that is right,  
18 I -- that's right.

19           THE COURT: I keep trying, I keep trying to  
20 get the City to just state what they're producing and  
21 what they're objecting to, and you're saying Mx.  
22 Green, you haven't even gotten that?

23           MX. GREEN: I mean I think we've gotten closer  
24 on the second consolidated request. Again, you know,  
25 some of what we were agreeing to, perhaps wrongly, we

1  
2 assumed that we'd be able to, given what's happened,  
3 ask for an extension. But, you know, we're certainly  
4 not at the end of that, we don't have a privilege log  
5 for, you know, substantial privilege assertions and,  
6 you know, it's also true that a lot of the content of  
7 our meet and confers gets lost between them. In that  
8 particular instance, Ms. Weiss decided that there were  
9 no privilege assertions that warranted a privilege log  
10 despite the fact that they're withholding massive  
11 amounts of documents on privilege bases, and we had to  
12 just go back through on Wednesday the meet and confer  
13 we'd had just the previous week to remind her that  
14 there are privilege assertions she's making.

15 MS. WEISS: Some of which were withdrawn, that  
16 was discussed.

17 MX. GREEN: Right, no, some were withdrawn but  
18 then her response to having committed to getting us a  
19 privilege log by February 4<sup>th</sup> and then not doing it  
20 was, well, I don't think that we need it anymore. And  
21 then, you know --

22 MS. WEISS: No, that's --

23 MX. GREEN: It's absurd.

24 THE COURT: All right --

25 MX. GREEN: And, you know, this is not just,

1 these are not the only requests, right? As you know,  
2 we just ordered today responses to individual RFPs  
3 that are still outstanding, there was just an  
4 agreement reached on the motion by Mr. Rankin at the  
5 very beginning that, you know, we've agreed on, but  
6 like there are -- like the amount of material we're  
7 missing is massive.

8  
9 THE COURT: All right, I'm prepared to do  
10 this. I'm prepared to order the production by 30 days  
11 from now which is going to be March 11<sup>th</sup>. If I get a  
12 request for, you know, 60 or maybe something a little  
13 more extension on the depositions, we'll try to figure  
14 that out. I just, I'm just trying to figure out, the  
15 thing I'm ordering is what pages of September, the  
16 September 10<sup>th</sup> letter?

17 MX. GREEN: So that's going to be pages 5  
18 through 8.

19 THE COURT: That's what's the subject of the  
20 March 1<sup>st</sup> conference?

21 MX. GREEN: Yes. Yes.

22 MS. WEISS: Your Honor, there was a lot more,  
23 I think I'm confused.

24 MX. GREEN: Let me propose this, Your Honor,  
25 we can draft an order, if defendants commit to giving us

1  
2 approval or any objections within 24 hours, we can probably  
3 get that out to the Court by the end of next week.

4 THE COURT: And order to what exactly is being  
5 produced by March --

6 MX. GREEN: Yes, exactly. Exactly.

7 THE COURT: Okay, I mean, did I say the 8<sup>th</sup>, what  
8 did I say?

9 MS. WEISS: You said the 11<sup>th</sup> initially.

10 THE COURT: The 11<sup>th</sup>, yes.

11 MX. GREEN: I mean, you know, Your Honor, I just  
12 would say, right, most of these motions were made  
13 January 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> so, you know, this is us  
14 finally getting documents 60 days after we've moved to  
15 compel them, you know, it's a lot of time.

16 THE COURT: All right, so you'll give me a  
17 proposed order on that.

18 MX. GREEN: Yes, and can we ask that the City  
19 just either give us objections with specificity and  
20 propose alternate language within 24 hours of getting  
21 our draft which we'll get to them by close of business  
22 or by the end of the night Monday?

23 MS. WEISS: That's fine.

24 THE COURT: Okay, you'll respond on Tuesday.

25 Okay, I'm a little concerned that, you know, I've done



1  
2 a lot of oral orders and they still count. I wouldn't  
3 mind someone putting it in a form that I could sign.  
4 You don't have to worry about 370 and 374 because I  
5 have those, but to the extent there were other orders,  
6 I think it would be a big help to give me a draft  
7 order. So, for example, you know, producing the audit  
8 trail logs and I forget what date, I think I had two  
9 weeks, and then a brief sanctions order, same thing  
10 for you, Mx. Green, for 369 --

11           MX. GREEN: Right, and the proposed sanction  
12 order, prophylactic order that we discussed, Your  
13 Honor.

14           THE COURT: Well that's a proposal.

15           MX. GREEN: Oh, sorry, yes.

16           THE COURT: I want to implement what I said  
17 today, not merely by my having said it, but also in a  
18 written order.

19           MX. GREEN: Understood.

20           THE COURT: (indiscernible) I actually ordered  
21 and that's what I'd just like to get a draft of. And  
22 you can just email it to me, cc the other side, if  
23 they want to complain about it they can give their own  
24 order.

25           MX. GREEN: Understood. And I assume it makes

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

sense to separate --

THE COURT: Anything I ordered other than 370 and 374.

MX. GREEN: Right, and I assume it makes sense to send two separate orders, one being the things you actually ordered and then, second, the proposed sanctions order on --

THE COURT: Yes, your proposed sanctions order should be filed on ECF.

MX. GREEN: Okay, perfect.

THE COURT: What I'm talking about you can just email to me because it's merely implementing something I've already said. Anything that I haven't ordered you should file on ECF.

MX. GREEN: Understood.

THE COURT: Okay, so I think we're done. Anything else, Mx. Green?

MX. GREEN: No, Judge.

THE COURT: Ms. Weiss, anything?

MS. WEISS: No, Your Honor.

THE COURT: Okay, thank you, everyone. Good-bye.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, In Re: New York City Policing During Summer 2020 Demonstrations, docket #20cv8924, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

CAROLE LUDWIG

Date: February 15, 2022